

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	.	Criminal No. 1:16cr265
	.	
vs.	.	Alexandria, Virginia
	.	December 15, 2017
NICHOLAS YOUNG,	.	9:30 a.m.
	.	
Defendant.	.	
	.	
. . . . .	.	

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE LEONIE M. BRINKEMA  
UNITED STATES DISTRICT JUDGE

VOLUME V

APPEARANCES:

FOR THE GOVERNMENT:	JOHN T. GIBBS, AUSA GORDON D. KROMBERG, AUSA EVAN N. TURGEON, SAUSA United States Attorney's Office 2100 Jamieson Avenue Alexandria, VA 22314
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FOR THE DEFENDANT:	NICHOLAS D. SMITH, ESQ. David B. Smith, PLLC 108 North Alfred Street Alexandria, VA 22314 and LINDA MORENO, ESQ. Linda Moreno P.A. 511 Avenue of the Americas No. 2 New York, NY 10011
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ALSO PRESENT:	SA NICHOLAS CASLEN NICHOLAS ENNS FABIAN VERA
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(Pages 1072 - 1335)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 OFFICIAL COURT REPORTER: ANNELIESE J. THOMSON, RDR, CRR  
2 U.S. District Court, Fifth Floor  
3 401 Courthouse Square  
4 Alexandria, VA 22314  
5 (703)299-8595  
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I N D E XDIRECT    CROSS    REDIRECT    RECROSSWITNESS ON BEHALF OF  
THE GOVERNMENT:

SA Nicholas A. Caslen	1079	1110	1179
(Resumed)			

Closing Argument by Mr. Gibbs:	Page 1241
Closing Argument by Mr. Smith:	Page 1255
Rebuttal Argument by Mr. Kromberg:	Page 1282

EXHIBITSMARKEDRECEIVEDGOVERNMENT'S:

Nos. 7-201B and 7-201D	1203
10-620	1097
10-650	1090
10-701	1090
10-806	1082
10-810	1085
10-821	1102
10-823	1086
10-824	1098
10-825	1101
10-826 and 10-827	1092
10-903	1081
11-600	1092
12-24	1204
16-001	1095

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EXHIBITS (Cont'd.)

MARKED

RECEIVED

DEFENDANT'S:

No. 1	1201
2, 3 and 8	1133
14 thru 24	1172
25	1208

1 P R O C E E D I N G S

2 (Defendant present, Jury out.)

3 THE CLERK: Criminal Case 16-265, United States of  
4 America v. Nicholas Young. Would counsel please note their  
5 appearances for the record.

6 MR. KROMBERG: Good morning, Your Honor. Gordon  
7 Kromberg, John Gibbs, and Evan Turgeon for the United States,  
8 and with us is Special Agent Caslen and Mr. Fabian Vera.

9 THE COURT: Good morning.

10 MR. SMITH: Good morning, Your Honor. Nicholas Smith  
11 for defendant Nicholas Young, and with me is Ms. Linda Moreno.

12 MS. MORENO: Good morning.

13 THE COURT: All right, the jury is all here, so I  
14 don't want to hold them up, but I had one quick question  
15 because I just about have the charge -- or at least the draft  
16 charge complete, which you're going to probably get around  
17 lunchtime. Is the defense making an entrapment defense as to  
18 all three counts or only as to Count 1? I need to know that  
19 because it changes how we structure the language of that  
20 instruction.

21 MR. SMITH: Your Honor, we are only making the  
22 entrapment defense with respect to Count 1.

23 THE COURT: That's what I thought, all right. So we  
24 have to modify the instruction slightly to make that clear to  
25 the jury.

1 MR. SMITH: Right.

2 THE COURT: All right, thank you.

3 All right, let's bring the jury in.

4 MR. KROMBERG: Sorry, Your Honor, on the special  
5 verdict form, if I may, can I ask Mr. Turgeon to address the  
6 Court?

7 THE COURT: Yes.

8 MR. TURGEON: Good morning, Your Honor. The  
9 government's reviewed Your Honor's proposed verdict form, and  
10 it occurred to us yesterday that as to Count 1, which is  
11 attempting to provide material support, there are actually two  
12 ways based on the evidence currently in evidence in which that  
13 could have happened. The first is attempting to provide  
14 material -- excuse me, attempting to provide misleading  
15 information to the FBI in order to protect Mo's ability to  
16 avoid capture and continue to serve ISIL, and that language is  
17 right from the indictment, and the other theory is the gift  
18 card theory, by attempting to provide material support by  
19 providing gift card codes or gift cards to Mo, and that  
20 language is from the indictment as well.

21 So the government would offer this special verdict  
22 form that allows the jury to make an independent determination  
23 as to each theory of guilt or innocence with regard to Count 1.  
24 So I've broken that down. I have a copy for Your Honor if Your  
25 Honor would like to review that.

1 THE COURT: Well, have you given that to the opposing  
2 counsel yet?

3 MR. SMITH: No.

4 MR. TURGEON: No, we haven't.

5 MR. SMITH: And, Your Honor, we're able to object  
6 right now to this proposal.

7 THE COURT: Well, wait. Let me take a look at it and  
8 think about it. I don't want to -- again, when a jury is on  
9 time, I don't want them to be held up. Let's get the jury in  
10 here. You have time to think about it.

11 MR. SMITH: Okay.

12 THE COURT: I'm not making up my mind. I just want  
13 to see it, and you can hand it up -- let's get the jury in  
14 first. Then hand it up.

15 MR. TURGEON: Thank you, Your Honor.

16 (Jury present.)

17 THE COURT: Good morning, ladies and gentlemen.  
18 Again, thank you for being here promptly. We're going to get  
19 the case started right away and move it as quickly as we can.  
20 Unless the snow looks like it's going to be horrendous, I would  
21 like us to stay in session then until five o'clock. If  
22 something changes, we start seeing a blizzard out there, I'll  
23 let you go home earlier.

24 All right, Mr. Kromberg?

25 MR. KROMBERG: Thank you, Your Honor.

Caslen - Direct

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1 SA NICHOLAS ANGELO CASLEN, GOVERNMENT'S WITNESS,  
2 PREVIOUSLY AFFIRMED, RESUMED  
3 DIRECT EXAMINATION (Cont'd.)

4 BY MR. KROMBERG:

5 Q. Special Agent --

6 THE COURT: You're still under your affirmation to  
7 tell the truth from yesterday.

8 THE WITNESS: Yes, Your Honor.

9 BY MR. KROMBERG:

10 Q. Special Agent Caslen, when did the FBI first learn that  
11 the defendant's associates in Libya in April 2011 were at the  
12 Abu Salim Martyrs Brigade?

13 A. We first learned about his association with that group  
14 through an e-mail that the defendant sent to alias Mo, who  
15 was -- the e-mail address was being handled by one of the FBI  
16 undercover agents. I believe it was in July.

17 Q. Well, hold on. The evidence is already in evidence.

18 Mr. Vera, can you put up 1-213, please?

19 Is that the one you're referring to?

20 A. It is.

21 Q. And what's the date of that?

22 A. The date is July 1, 2015.

23 Q. And the reference to the organization was what in that  
24 message?

25 A. The second line from the bottom, "People from the Abo



Caslen - Direct

1080

1 Salem Suhada Brig."

2 Q. Okay. Was a more complete name given in, in February 2016  
3 in a text message?

4 A. It was.

5 Q. Okay. Could we put on Government Exhibit 2-126? And in  
6 that message, is the more complete name in there?

7 A. It is. It's in the second message from the bottom. It  
8 states, "Please let me know if you find any brothers from derna  
9 or Abu Salim martyrs brigade."

10 Q. And before those two messages, who did -- what  
11 organization did the FBI understand Mr. Young to have been  
12 with?

13 A. We did not know at the time.

14 Q. Now, yesterday, you were talking about Government Exhibit  
15 14-119.

16 Can you put on 14-119?

17 Now, you mentioned that six days -- you had seen  
18 photos from six days earlier with Mr. Young dressed in a Nazi  
19 uniform. Did you see photos after this, chronologically after  
20 this time of him dressed in a Nazi uniform?

21 A. I did. In 2007, there was -- we had seized the disc from  
22 the defendant's residence that had photographs of the defendant  
23 and some other folks at a, what appeared to be a dinner party  
24 dressed in Nazi uniforms, with flags, with swastikas.

25 Q. Was he holding a gun in one of those photographs?

Caslen - Direct

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1 A. He was.

2 MR. KROMBERG: Judge, we would ask that you take a  
3 look at 10-903.

4 MR. SMITH: We object, Your Honor. Relevance,  
5 cumulative.

6 MR. KROMBERG: And we're particularly interested in  
7 the metadata on the bottom of 10-903.

8 THE COURT: I'll permit that. Overruled.

9 (Government's Exhibit No. 10-903 was received in  
10 evidence.)

11 MR. KROMBERG: Thank you. Please publish 10-903.

12 Q. And, Special Agent Caslen, what is the date that that  
13 document was created?

14 A. November 17, 2007.

15 Q. Okay. Let me turn your attention to Government Exhibit  
16 which is not yet in evidence 10-1006.

17 I don't think you're going to have any issue with it.

18 MR. SMITH: There is no 10-1006.

19 THE COURT: 10 what?

20 MR. KROMBERG: 10-806.

21 THE COURT: 806.

22 MR. KROMBERG: And the next is 10-810. I don't think  
23 you care about that.

24 MR. SMITH: No, no. No objection.

25 THE COURT: All right, it's in.

Caslen - Direct

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1 (Government's Exhibit No. 10-806 was received in  
2 evidence.)

3 MR. KROMBERG: So 10-806, please publish.

4 Q. And it's very difficult to read those, but, Special Agent  
5 Caslen, can you tell us what those documents are?

6 MR. SMITH: Objection. This is another example of  
7 documents where we cannot read the documents. They're too far  
8 zoomed out. The originals aren't here.

9 MR. KROMBERG: The originals are here if you want the  
10 originals, but we can't put the originals on the screen in any  
11 way other than this.

12 THE COURT: Well, you actually can. The  
13 old-fashioned way is you put these on the Elmo and it projects,  
14 but, I mean, I can't even read these in my book.

15 MR. KROMBERG: We're going to blow them up. Let me  
16 ask the witness, if I may, Judge, what are these documents?

17 THE WITNESS: I recognize the photo as being e-mails  
18 that we seized from the defendant's residence on the date of  
19 his arrest and search that are correspondence between his  
20 employers about his trip.

21 BY MR. KROMBERG:

22 Q. Regarding his, his request for leave?

23 A. Correct.

24 Q. Okay. And they provided some dates that you were using to  
25 put into the timeline that you were compiling, correct?

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1 A. That is correct.

2 Q. Okay. Can you --

3 THE COURT: See, the normal way this would be done is  
4 the originals, that is, what you've got in your hand would be  
5 sitting over here and would be shown to the witness or -- and  
6 then you'd have the electronic version which the jury could be  
7 seeing, all right? So we may have to spend some time before  
8 the case goes to the jury with your substituting what you're  
9 holding, and we will, we will use the scissors to open them all  
10 up, and the only thing I'll ask the jury is be very careful  
11 when you look at the document to put it back in the correct  
12 folder. Otherwise, we lose control because I don't think we've  
13 put stickers -- you want scissors again? Can we get scissors?

14 We're going to leave them there. You just behave  
15 yourselves with them, all right?

16 MR. KROMBERG: Thank you, Your Honor. And we did, in  
17 fact, discuss this very issue this morning. Mr. Vera is  
18 working with the court security officer to substitute the  
19 originals for the items -- for the copies, excuse me.

20 THE COURT: All right. So if defense counsel want to  
21 look at them, go ahead.

22 While that's happening, so, Agent, these are  
23 communications -- printouts, right, of e-mail communications  
24 between the defendant and his employer?

25 THE WITNESS: I believe it's between the defendant's

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1 employer and another employer. I don't -- I do not recall if  
2 it is the defendant e-mailing the employer.

3 THE COURT: But they were in his possession?

4 THE WITNESS: They were in the -- I'm sorry, Your  
5 Honor?

6 THE COURT: They were where?

7 THE WITNESS: They were seized out of defendant's  
8 residence.

9 THE COURT: All right.

10 MR. SMITH: No objection, Your Honor.

11 THE COURT: All right.

12 MR. KROMBERG: Thank you, Your Honor.

13 THE COURT: Let's get them all pooled together and  
14 give them to the witness. These are what, five sheets of  
15 paper? Four sheets. They should all have labels on them.

16 BY MR. KROMBERG:

17 Q. Okay. So the judge had asked, was the defendant a  
18 recipient or copied on those e-mails?

19 A. No.

20 Q. And they were from Sergeant Washington, is it?

21 A. They're from Sergeant Tiffany M. Washington to Julius Byrd  
22 and Ronald Pavlik, who was the chief --

23 Q. And they were regarding a request for leave by the  
24 defendant?

25 A. Yes.

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1 Q. Okay. We'll move on. They're in evidence.

2 And is it correct that you used that information to  
3 put on the timeline to try to reconstruct the events of what  
4 happened in 2011?

5 A. Correct.

6 MR. KROMBERG: Okay. We also move in Government  
7 Exhibit 10-810, which is the passport that was found at the  
8 defendant's house in August 2016.

9 THE COURT: I assume there's no objection?

10 MR. SMITH: No objection.

11 THE COURT: No objection. All right, it's in. It's  
12 in, Mr. Kromberg.

13 (Government's Exhibit No. 10-810 was received in  
14 evidence.)

15 THE COURT: All right, now don't get so aggressive  
16 with the cutting that we're losing the stickers.

17 MR. KROMBERG: In fact, I think we need to put the  
18 sticker on that because the sticker was put on the bag.

19 THE COURT: I know. That's why I'm saying you're  
20 getting too aggressive. We're going to lose control of the  
21 evidence. We have one here.

22 Oh, you've got one? All right.

23 Now, Mr. van Roekel, I'm sorry, that sticker needs to  
24 be put on the passport. Just put it on the back of the  
25 passport.

Caslen - Direct

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1 BY MR. KROMBERG:

2 Q. Okay. Special Agent Caslen, did you use this passport to  
3 come up with events in the timeline?

4 A. Yes, this passport was used.

5 Q. Okay. Take a look, if you would, at Government Exhibit  
6 10-823, which is not yet in evidence.

7 MR. SMITH: No objection, Your Honor.

8 THE COURT: It's in.

9 (Government's Exhibit No. 10-823 was received in  
10 evidence.)

11 MR. KROMBERG: Okay. Mr. Vera, can you publish  
12 10-823? We'll put the original in later, but for now just --

13 Q. Special Agent Caslen, can you tell what that document is,  
14 10-823?

15 A. I recognize this document. It was -- I requested that it  
16 be translated by --

17 Q. Well, before you even go into the translation, but just  
18 Libyan customs -- a Libyan customs form?

19 A. Correct.

20 Q. And there's a date on it?

21 A. There is. It's September 8, 2011.

22 Q. And it reflects body armor?

23 A. Correct.

24 Q. Okay. And you used that for your timeline as well,  
25 correct?

Caslen - Direct

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1 A. I did.

2 Q. Now, take a look at 10-701, which is a book?

3 THE COURT: Now, wait, hold on a second. I want to  
4 make sure that I understand the evidence.

5 MR. SMITH: Objection.

6 THE COURT: The evidence appears to be in both Arabic  
7 and English.

8 THE WITNESS: Correct.

9 THE COURT: The English that's on this exhibit, was  
10 that originally on the exhibit just like this?

11 THE WITNESS: It was, Your Honor.

12 THE COURT: All right. So in other words, none of  
13 this has been translated by anybody, I mean, anybody at the  
14 FBI's direction?

15 THE WITNESS: None of the writing placed onto the  
16 exhibit, Your Honor, was placed on there by an FBI translator.  
17 We requested a translator translate the Arabic portion, but  
18 that is not reflected directly onto the exhibit. The English  
19 on there was written by, that's original to the exhibit.

20 THE COURT: That's all I wanted to make sure. So  
21 that just so the jury understands, 10-823 is exactly what you  
22 got from wherever you got it?

23 THE WITNESS: From the defendant's residence, Your  
24 Honor.

25 THE COURT: All right, that's fine.



Caslen - Direct

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1 BY MR. KROMBERG:

2 Q. Okay. 10-701 is a book?

3 MR. SMITH: And here, Your Honor, we object. This is  
4 again cumulative, 401, 403.

5 THE COURT: All right, let me see.

6 MR. KROMBERG: And, Judge, I believe this is the only  
7 book that -- in the defendant's possession that its title  
8 establishes a point we've been trying to make.

9 THE COURT: All right, hold on.

10 Is that in a folder of some kind?

11 MR. KROMBERG: I have the book here.

12 THE COURT: All right. I want to take a -- I assume  
13 the defense has already seen it?

14 MR. KROMBERG: It's been --

15 THE COURT: Where are you going?

16 MR. SMITH: I was going to hand it up.

17 THE COURT: No, you never hand anything up. You give  
18 it to my court security officer, Mr. Smith.

19 MR. SMITH: I just wanted to be careful.

20 THE COURT: Okay. So you have clips on it because  
21 it's falling apart. There's no binding.

22 I don't see what the purpose of this is given all the  
23 other evidence that's in the case.

24 MR. KROMBERG: Your Honor, we need to approach if you  
25 want my response.

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1 THE COURT: Yes, go ahead.

2 (Bench conference on the record.)

3 MR. KROMBERG: Your Honor, the title of the book is  
4 *The SS: Hitler's Instrument of Terror*. We want to show  
5 that -- the symbol of the front, the parallel bolts, and that  
6 the SS was a terror organization and that's what Mr. Young was  
7 posing as, a member of a terror organization.

8 THE COURT: No, I think only the cover can come in.

9 MR. KROMBERG: Absolutely fine.

10 MR. SMITH: Your Honor, this is the point of parity.  
11 This is 403 evidence, pure 403 evidence, and the word "terror,"  
12 "terror" can mean many things. Terrorism, non-state act of  
13 terrorism is not the same as the abstract word "terror." This  
14 argument is plainly silly and --

15 THE COURT: It works into the entrapment issue, and  
16 I'm allowing just the cover, all right?

17 MR. KROMBERG: That's fine.

18 THE COURT: So actually then, you don't need the book  
19 701 as you've done it.

20 MR. KROMBERG: That's fine.

21 THE COURT: Take it back.

22 (End of bench conference.)

23 THE COURT: Just for the record, I've determined just  
24 the cover is all that's needed for 701, so 10-701 is in  
25 evidence, but that exhibit will consist solely of the cover

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1 that we already have through a slide.

2 (Government's Exhibit No. 10-701 was received in  
3 evidence.)

4 MR. KROMBERG: Can you publish the cover of 701,  
5 10-701? Okay.

6 Q. Now, Special Agent Caslen, how many cell phones were found  
7 in the defendant's house at the search in August 2016?

8 A. There were a lot of cell phones.

9 Q. I'm handing you what's been marked --

10 THE COURT: You don't have to open that.

11 MR. KROMBERG: I wasn't. I was just going to hand  
12 him the bag, which has been marked 10-650.

13 THE COURT: Is there any objection to 650?

14 MR. SMITH: To the extent it's just the physical  
15 phones themselves, no.

16 THE COURT: Is there anything other than the phones  
17 in there?

18 MR. KROMBERG: No. Just bags with phones in them.

19 THE COURT: All right, 650 is in.

20 (Government's Exhibit No. 10-650 was received in  
21 evidence.)

22 BY MR. KROMBERG:

23 Q. Now, Special Agent Caslen, were you able to determine the  
24 names in which all of these phones were registered in?

25 A. Not all of the phones here we were able to determine the

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1 name, but we were able to determine the name that some of the  
2 defendant's phones were registered in.

3 Q. Okay. Take a look, if you would, at Government Exhibit  
4 3-125, which I believe has already been admitted.

5 THE COURT: Wait until we confirm that.

6 It's in. 125 is in.

7 MR. KROMBERG: It was seized from the truck, and we  
8 stipulated that it was seized from the truck.

9 Okay. Can you put 3-125 on the screen, please? And  
10 you're going to have to blow that up. That's a bad term to use  
11 here, but expand it.

12 MR. SMITH: Objection.

13 THE COURT: Sustained.

14 MR. KROMBERG: And focus in on the top, if you would.

15 Q. Now -- well, can you tell the jury what this document  
16 was -- is?

17 A. This is a document seized from the defendant's truck the  
18 day we searched his vehicle, and it's a piece of paper with an  
19 account summary for a Virgin Mobile cellular telephone.

20 Q. And in what name was it in?

21 A. I recognize the exhibit, and the name is an Otis  
22 Driftwood.

23 Q. Okay. Did --

24 THE COURT: I'm sorry, spell that. Otis?

25 THE WITNESS: Otis, O-t-i-s. Driftwood,

Caslen - Direct

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1 D-r-i-f-t-w-o-o-d.

2 BY MR. KROMBERG:

3 Q. Can you take a look at Government Exhibit 11-600?

4 MR. SMITH: No objection.

5 THE COURT: All right, it's in.

6 (Government's Exhibit No. 11-600 was received in  
7 evidence.)

8 MR. KROMBERG: Can you publish 11-600, please?

9 Q. And is that the Sprint subscriber information for Otis  
10 Driftwood?

11 A. It is. This is a subscriber information for another  
12 account on Sprint in the name of Otis Driftwood as well.

13 Q. Were you able to find a 12939 Shadow Lane in Fairfax?

14 A. There is a Shadow Lane in Fairfax, but there's not a  
15 12939.

16 Q. Take a look, if you would, at Government Exhibits 10-826  
17 and 827. Now, they are not in evidence yet; however, the  
18 parties have stipulated in stipulation No. 40, which is  
19 Government Exhibit 12-40, that's -- just one moment.

20 THE COURT: Is there any objection to 26 or 27?

21 MR. SMITH: No, Your Honor.

22 THE COURT: No? All right, they're both in.

23 (Government's Exhibit Nos. 10-826 and 10-827 were  
24 received in evidence.)

25 MR. KROMBERG: Okay. Thank you.

Caslen - Direct

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1                   Can you publish, Mr. Vera, 10-826? And you have to  
2 expand that near the top.

3 Q.    Special Agent Caslen, can you tell what 10-826 is?

4 A.    This is a receipt for a Boost Mobile phone dated  
5 December 2, 2011, and the customer name was Simon Belmont.

6 Q.    Take a look now at 10-827. And can you tell what that  
7 document is?

8 A.    This is a document for another Virgin Mobile phone.

9 Q.    In the name of?

10 A.    I believe that one was also in the name of Simon Belmont.

11 Q.    Now, were you able to locate Simon Belmont?

12 A.    We searched for -- we did a Google search for Simon  
13 Belmont, and he's a character in a, I believe in a movie.

14 Q.    But you didn't find the person who was a subscriber who  
15 had these phones, Simon Belmont?

16 A.    No.

17 Q.    Okay. Now, Special Agent Caslen, what involvement did you  
18 have -- sorry -- did you have with a grand jury investigation  
19 involving the defendant, Nicholas Young?

20 A.    Over the course of the investigation, the FBI, myself  
21 included, my colleagues, some who have testified earlier, have  
22 requested federal grand jury subpoenas related to the defendant  
23 for subscriber information, information such as Agent Cameron  
24 Siegfried stated, introduced related to the FedEx surveillance  
25 videos. We received that information directly at times from

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1 the providers, from FedEx, for example. There were federal  
2 grand jury subpoenas that we ourselves issued and received the  
3 response back from.

4 Q. When you say you yourself issued, what do you mean?

5 A. The agents assigned to the investigation and that were  
6 doing the investigation.

7 Q. Right, but did they write the grand jury subpoena or  
8 obtain a grand jury subpoena and then serve it?

9 A. We obtained the grand jury subpoena from the grand jury  
10 and then served them directly to the providers or via the  
11 portals that some of these online social media companies have  
12 us serve them through.

13 Q. And how was -- what was your involvement in the receipt of  
14 information that were provided in response to grand jury  
15 subpoenas?

16 A. We would analyze the data.

17 Q. No, I'm sorry, before you get there, how did, how did you  
18 get the data to analyze?

19 A. It would be sent directly to us. Sometimes, for example,  
20 Facebook or Google, for example. We'll use Google as an  
21 example in this case. You serve the subpoena through an online  
22 portal to Google. Google notifies us, the agent, that your  
23 results are ready. You log on to your account in Google. You  
24 download the results, and then we upload them into our case  
25 file.

Caslen - Direct

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1 Q. What district was the grand jury that was involved in the  
2 investigation located?

3 A. Eastern District of Virginia.

4 Q. Okay. Now, please take a look at Government Exhibit --

5 THE COURT: I'm sorry, when did you start  
6 getting grand -- as far as you know, when did you start, you  
7 being the FBI, start getting grand jury subpoenas? From what  
8 year?

9 MR. KROMBERG: If I may, Judge, the next -- what I  
10 was asking the defendant -- the witness to look at --

11 THE COURT: Are you going there?

12 MR. KROMBERG: -- is a list.

13 THE COURT: All right.

14 BY MR. KROMBERG:

15 Q. Okay. Can you please look at Government Exhibit 16-001?  
16 It's not in evidence.

17 THE COURT: All right.

18 BY MR. KROMBERG:

19 Q. It should be 16-001.

20 MR. SMITH: No objection.

21 MR. KROMBERG: Oh, in that case --

22 THE COURT: There's no objection?

23 MR. SMITH: No.

24 THE COURT: All right, it's in.

25 (Government's Exhibit No. 16-001 was received in



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1 evidence.)

2 MR. KROMBERG: Please publish 16-001.

3 Q. Special Agent Caslen, what is that document?

4 A. This is a document that we put together showing examples  
5 of grand jury subpoenas that were served in this investigation.

6 Q. Was this all the subpoenas that were served in this  
7 investigation?

8 A. No, it was not. This is just a sampling.

9 Q. Were all of those subpoenas directed at Nicholas Young?

10 A. Yes.

11 Q. Were other subpoenas in this investigation directed at  
12 individuals other than Nicholas Young?

13 A. They were.

14 Q. For example, were there -- were you looking for subscriber  
15 information for other individuals?

16 A. Yes.

17 Q. Okay. 16-001 is in. Then we can take it off -- I mean,  
18 we can take it off the screen.

19 So, Special Agent Caslen, what techniques of  
20 operational security did you observe or did you find the  
21 defendant to have used?

22 A. There were plenty. For example, as we've heard in  
23 testimony, the defendant would instruct Mo to take the battery  
24 out of his cell phone when they would talk about derogatory  
25 information. The defendant would routinely use a FedEx store

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1 to disguise where he was e-mailing people from rather than  
2 using his home computer.

3 The use of the bag of cell phones that we showed  
4 earlier rather than simply using his phone to communicate with  
5 other individuals.

6 Q. Let me ask you to look at Government Exhibits 620 --  
7 10-620 and 10-621. They are things, 10-620 and 621.

8 THE COURT: Any objection to 621 and 620?

9 MR. SMITH: One moment, Your Honor.

10 Your Honor, we object on relevance grounds. I don't  
11 understand.

12 MR. KROMBERG: I'm going to hand to the Court --

13 MR. SMITH: Relevance and 403.

14 THE COURT: Wait a minute. 620?

15 MR. KROMBERG: In fact, we don't need -- it's  
16 already, it's already marked.

17 Judge, I'm going to hand to the court security  
18 officer to hand to the Court what is 10-620 so the Court can  
19 see what it is.

20 THE COURT: The objection to 620 is overruled. Go  
21 ahead.

22 (Government's Exhibit No. 10-620 was received in  
23 evidence.)

24 BY MR. KROMBERG:

25 Q. And where was this found, Special Agent Caslen?

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1 A. This item is an RF bug detector, and it was found in the  
2 defendant's residence on the day we searched his residence.

3 MR. SMITH: Objection to the evidence, Your Honor.

4 THE COURT: Overruled. That's not looking for  
5 cockroaches. What is it looking for? You said it's a bug  
6 detector.

7 THE WITNESS: This would search for devices that were  
8 placed inside of a residence that were transmitting a signal.

9 THE COURT: It's in.

10 BY MR. KROMBERG:

11 Q. Take a look at the photo of Government Exhibit 10-824, but  
12 it's not in evidence.

13 Could we get the photo of 10-824?

14 MR. SMITH: No objection.

15 THE COURT: All right, 824 is in.

16 (Government's Exhibit No. 10-824 was received in  
17 evidence.)

18 MR. KROMBERG: All right, can you publish 10-824?

19 Q. And what is that?

20 A. This is a receipt from PayPal for a pair of night vision  
21 goggles that were purchased by Nicholas Young, with the  
22 defendant's address and an e-mail address used by the  
23 defendant, flyngdutchman1979@hotmail.com, with the defendant's  
24 auction ID name, skraal777, and that is spelled  
25 s-k-r-a-a-l-7-7-7.

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1 Q. Now, I'd like you to look at Government Exhibit 10-821,  
2 which is a booklet which the parties have stipulated was seized  
3 from the defendant's house, but the parties have not agreed on  
4 its admission into evidence.

5 MR. SMITH: And we object on 401 and 403 grounds and  
6 cumulative grounds.

7 THE COURT: Hold on a second.

8 MR. SMITH: Your Honor, may we approach the bench  
9 about this issue? There's something we need to explain.

10 THE COURT: All right, go ahead.

11 (Bench conference on the record.)

12 THE COURT: Yes.

13 MR. SMITH: This was apparently work-related  
14 material. I don't know what the government's relevance  
15 argument is, but to the extent they're presenting this as some  
16 sort of a --

17 THE COURT: Well, it puts him on notice. I mean,  
18 this is evidence again of what was in this man's mind as to an  
19 issue and what investigators look for in terms of indicia of  
20 terrorist activities. It goes to the entrapment issue, it  
21 seems to me.

22 MR. KROMBERG: Mr. Gibbs suggested it was a checklist  
23 that the defendant was trying to follow, but I thought that was  
24 being sarcastic. But Your Honor is exactly right; it lists  
25 various things that the government looks for, and that goes to

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1 the defendant's knowledge of what the government looks for.

2 THE COURT: Yeah, I'm overruling the objection.

3 (End of bench conference.)

4 MR. KROMBERG: I'm handing to the court security  
5 officer Government Exhibit 10-821, and it's been admitted into  
6 evidence.

7 Mr. Vera, can you put the first page of that on the  
8 screen? And blow it up so the jury can see it, please.

9 "Warnings Signs of Terrorist Events."

10 Q. So, Special Agent Caslen, this was found in the  
11 defendant's house in August 2016?

12 A. Correct.

13 Q. What is the point of -- what's the Bureau of Justice  
14 Assistance's aim in distributing this document?

15 A. This is to be a pocket guide for law enforcement officers,  
16 state, local, tribal law enforcement officers, on how to spot  
17 signs of terrorist events and explain to them what to do if you  
18 see them.

19 MR. KROMBERG: Can you turn to page 5, Mr. Vera?

20 Q. And, Special Agent Caslen, what is a precursor, a possible  
21 sign of terrorist activities that local offices should be on  
22 the lookout for?

23 MR. SMITH: Objection. This is being used to prove  
24 the truth of the --

25 THE COURT: No. At the bench conference, we

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1 explained why it's going into evidence. Overruled.

2 THE WITNESS: There are several things in here. Just  
3 to point out the relevant ones, modifications of vehicles,  
4 which the defendant had gutted his truck, the interior of his  
5 truck; possession of or attempts to acquire the following types  
6 of items: body armor, identifications. An example, military  
7 identifications.

8 Q. What military identifications are you talking about?

9 A. In the defendant's residence, there were two visitor's IDs  
10 to DTRA, the Defense Threat Reduction Agency.

11 Q. Can you take a look at Government Exhibit 10-825? It's  
12 not yet in evidence.

13 MR. SMITH: No objection.

14 THE COURT: All right, it's in.

15 (Government's Exhibit No. 10-825 was received in  
16 evidence.)

17 MR. KROMBERG: If you could put that on the screen,  
18 please? Okay.

19 Q. So that was -- so please continue, Special Agent Caslen.

20 A. I stand corrected. I said they were visitor's badges.  
21 They are temporary badges. Those are the badges that were  
22 found at the defendant's residence.

23 Q. Okay. Go back to 10-821. Now, you said as a precursor,  
24 there's body armor. What body armor was found at the  
25 defendant's house?

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1 MR. SMITH: Objection, Your Honor. 401, 403, law of  
2 the case.

3 THE COURT: Now that's become relevant. I'm  
4 permitting it in.

5 (Government's Exhibit No. 10-821 was received in  
6 evidence.)

7 BY MR. KROMBERG:

8 Q. What body armor was found?

9 A. There was over 70 pieces of body armor found in the  
10 defendant's residence of various types: helmets, ballistic  
11 helmets, a ballistic face mask, full length body armor, to  
12 include legs. I would say --

13 Q. For how many people?

14 A. Well, there were ten tactical vests that were, contained  
15 ballistic panels as well as many other inserts that could be  
16 placed into them. There was neck guards. There were ceramic  
17 plates.

18 Q. How many neck guards were there?

19 A. I don't recall the exact amount, but there were several.

20 MR. KROMBERG: So we have them, and, Judge, we can  
21 move them into evidence, but they take up a lot of space  
22 because of the volume and such, but we can move them in now,  
23 and they are Government Exhibits 10-500 through 10-569.

24 MR. SMITH: And before that, may we have one final  
25 bench conference?

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1 THE COURT: Now, you said the word "final." If I  
2 hold you --

3 MR. SMITH: On this issue.

4 THE COURT: All right.

5 MR. SMITH: Thanks.

6 THE COURT: Approach.

7 (Bench conference on the record.)

8 THE COURT: Yeah.

9 MR. SMITH: Okay. So our position is that it is the  
10 law of the case already that the body armor would be excluded  
11 unless the defense opened the door. We believe we have not  
12 opened the door. We believe that it's on the record that the  
13 judge has already ruled that unless the government -- the  
14 defense opened the door, the body armor would not be coming in,  
15 so we're going to move for a mistrial on that ground.

16 THE COURT: Stop. We're not having a mistrial in  
17 this case.

18 The jury does not need to see it.

19 MR. KROMBERG: Okay.

20 THE COURT: I think, however, because this timeline  
21 is significant, I'm allowing -- you've got enough on that.

22 MR. KROMBERG: Okay.

23 THE COURT: So just go ahead.

24 (End of bench conference.)

25 BY MR. KROMBERG:



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1 Q. Scratch that, Special Agent Caslen. We are not going to  
2 bring those -- bring the body armor in, but -- -

3 MR. SMITH: Objection.

4 THE COURT: Overruled. Let's not just having  
5 objections all the time.

6 BY MR. KROMBERG:

7 Q. I'd like to show you Government Exhibit 10-532A.

8 MR. SMITH: Objection, Your Honor. 401, 403. It's  
9 the same issue Your Honor just ruled on, and Gordon is ignoring  
10 it.

11 THE COURT: Let me see what we have here. 10-532?

12 MR. KROMBERG: 532 is a piece of body armor. 10-532A  
13 is photographs.

14 MR. SMITH: Objection to --

15 THE COURT: Just a second.

16 No, we don't need that. 532 is not in.

17 BY MR. KROMBERG:

18 Q. Okay. When you mentioned the types of body armor that  
19 you --

20 THE COURT: No, let's get on to another topic.

21 BY MR. KROMBERG:

22 Q. Okay. Let's go back to 821, page 5. Weapons or  
23 ammunition, were there weapons and ammunition in the house?

24 MR. SMITH: Objection. This is law of the case, and  
25 it's also 403.

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1 THE COURT: Yeah. Mr. Kromberg, I think we've been  
2 through some of this pretrial, all right? So move on to  
3 another question. Sustained.

4 BY MR. KROMBERG:

5 Q. Okay. Were there unusual chemicals or ingredients in the  
6 house?

7 MR. SMITH: Objection. Law of the case, 401, and  
8 403.

9 THE COURT: I don't think that issue was addressed.

10 MR. KROMBERG: I don't think it has, Your Honor.

11 THE COURT: No. Overruled.

12 BY MR. KROMBERG:

13 Q. Were there unusual chemicals or ingredients in the house?

14 A. Yes, there were. There were smoke grenades --

15 MR. SMITH: Objection. We move for a mistrial.

16 THE COURT: Overruled.

17 MR. SMITH: This is the law of the case.

18 THE COURT: Overruled and denied.

19 Go ahead.

20 BY MR. KROMBERG:

21 Q. Go ahead.

22 MR. SMITH: But to be clear, this was -- this is an  
23 issue that Your Honor ruled on before trial.

24 MR. KROMBERG: That is not correct, Judge, and it's  
25 also correct that sometimes the Court changes its mind, but

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1 that did not happen in this case because that did not --  
2 question did not come up before.

3 THE COURT: I've made the ruling, but I do want to  
4 move this along.

5 MR. KROMBERG: Right.

6 Q. So what are the chemicals? What were the chemicals that  
7 you saw that were found in the house?

8 A. There was also a thermite grenade, which --

9 MR. SMITH: Your Honor, objection. This is exactly  
10 what the Court just ruled on.

11 THE COURT: All right.

12 MR. SMITH: Mr. Kromberg tried to elicit the exact  
13 same testimony right after Your Honor ruled on it.

14 THE COURT: Mr. Kromberg, move on to identification  
15 issues or other items that might be there on the list.

16 MR. KROMBERG: We've talked about the prepaid cell  
17 phones. Can we go to the next page?

18 Can we go to the next page?

19 Q. And, Special Agent Caslen, under "Contacts," what does  
20 this, the document that the defendant had in his house say to  
21 do if you see a threat or something that is suspicious in this  
22 regard? Step one says either arrest them or detain them or  
23 report them?

24 A. Okay.

25 MR. SMITH: Objection. Leading.

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1 THE COURT: Sustained.

2 THE WITNESS: Yes, that is correct.

3 BY MR. KROMBERG:

4 Q. Okay. And when the judge says "sustained," then you don't  
5 answer -- don't answer the question.

6 A. My apologies.

7 MR. KROMBERG: Can we go to the next page?

8 Q. Now, these are warning signs which, some of which appear  
9 to be the same as the precursors we went over before, but were  
10 there anti-government special interest tattoos involved in this  
11 case?

12 MR. SMITH: Objection. Leading.

13 THE COURT: Yeah, I think that's leading. You've got  
14 to do it in a non-leading manner. Sustained.

15 BY MR. KROMBERG:

16 Q. Okay. Starting from the top with domestic terrorist  
17 warning signs, were there any signs of domestic terrorism  
18 warnings in the -- you've seen in this case?

19 A. There were. There were bumper stickers. There were  
20 anti-government special interest tattoos. There -- am I  
21 allowed to read?

22 Q. Go ahead.

23 A. Claims regarding government conspiracies.

24 Q. And how about claims that law enforcement is illegitimate?

25 A. That's correct.

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1 MR. KROMBERG: Okay. Let's go to the next page. Is  
2 that the end? No, okay.

3 Q. How about on the last page, under "Other Signs,"  
4 "extremist religious literature and paraphernalia"?

5 A. There were. Already placed into evidence were the copies  
6 of *Inspire* magazine, the Book of Jihad.

7 Q. And the history of visiting suspicious Internet sites?

8 A. Correct.

9 Q. And the -- how about bomb-making manuals?

10 MR. SMITH: Objection, Your Honor. Your Honor has  
11 already ruled on this. Law of the case.

12 THE COURT: I believe we've ruled on that -- all  
13 right, I think we have enough on this, Mr. Kromberg. Let's  
14 move on.

15 BY MR. KROMBERG:

16 Q. Okay. And the last is a picture of a book by Andrew  
17 Macdonald. Was that book found in his, in his house? No,  
18 correct?

19 A. No, *The Turner Diaries* was --

20 MR. SMITH: Leading.

21 MR. KROMBERG: Okay. Strike that. The answer is no.

22 THE COURT: Let's move on. Come on.

23 BY MR. KROMBERG:

24 Q. What book was seized by the author Andrew Macdonald?

25 MR. SMITH: Objection. Cumulative.

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1 THE COURT: You may ask the question.

2 BY MR. KROMBERG:

3 Q. What book was seized from the defendant's house by Andrew  
4 Macdonald?

5 A. I believe the book *Hunter*, which was already placed into  
6 evidence.

7 MR. KROMBERG: And that was 10-860 in evidence? I've  
8 lost track.

9 MR. SMITH: No. The Court excluded that exhibit.

10 MR. KROMBERG: Then now we're moving it into  
11 evidence.

12 MR. SMITH: Your Honor, it's already been excluded.

13 THE COURT: Just a second.

14 I don't think we need to get into this. I'll sustain  
15 the objection.

16 MR. KROMBERG: Okay. Just one moment, please.

17 Judge, at some point, we're going to need to get with  
18 the court reporter to make sure that the evidence that we think  
19 is in is in --

20 THE COURT: Yes.

21 MR. KROMBERG: -- but we reserve -- this is all for  
22 this witness, but we do reserve, I hope, the ability to move  
23 things into evidence on the basis of, on the basis of testimony  
24 already if we have somehow forgotten to move them in.

25 THE COURT: My practice with cases involving an

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1 extensive amount of documentary evidence is that we don't waste  
2 the jury's time with that. We do it on the record at some  
3 point when we're in recess, all right?

4 MR. KROMBERG: And I will pass -- return the Court's  
5 pair of scissors.

6 THE COURT: All right.

7 MR. KROMBERG: Thank you, Your Honor.

8 THE COURT: Cross-examination, Mr. Smith?

9 CROSS-EXAMINATION

10 BY MR. SMITH:

11 Q. Good morning, Agent Caslen.

12 A. Good morning, counselor.

13 Q. So, Agent Caslen, you're here testifying as a summary  
14 witness today, correct?

15 A. Correct.

16 Q. And that means you're testifying about the length of the  
17 investigation into the defendant, about the course of the  
18 investigation into the defendant?

19 A. Towards the evidence that was put in, correct.

20 Q. Towards the evidence that was put in.

21 And you are the case agent on this investigation,  
22 correct?

23 A. I currently am, yes.

24 Q. What does that -- what does that mean, case agent?

25 A. The agent in charge of managing the investigation, and

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1 have been so since October 2015.

2 Q. So at some point since October 2015 and the present, have  
3 you familiarized yourself with the case, the case file, so to  
4 speak, into Nicholas Young?

5 A. I have.

6 Q. So you're familiar with the course of the investigation  
7 into Mr. Young?

8 A. Correct.

9 Q. Okay. Mr. Caslen, when did the counterterrorism  
10 investigation into Nicholas begin?

11 A. I believe it began in 2010.

12 Q. And what prompted the investigation into Mr. Young?

13 A. It was the defendant's connection to Zachary Chesser.

14 Q. And can you explain what you mean by "connection"?

15 A. I believe there were phone contacts that were, they were  
16 attempting to verify.

17 Q. And do you remember how many phone contacts there were?

18 A. I do not recall.

19 Q. It was about two, right?

20 A. I would not know.

21 MR. SMITH: Your Honor, I'm just not introducing an  
22 exhibit. I'm handing up a document, which is an FBI memorandum  
23 dated September 9, 2010, just to refresh Agent Caslen's  
24 recollection.

25 Q. Have you ever seen that memorandum, Agent Caslen?



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1 MR. KROMBERG: Objection, Judge. The question is  
2 does it refresh your recollection.

3 THE COURT: Yeah. That's the only proper question.

4 BY MR. SMITH:

5 Q. Does it refresh your recollection?

6 A. Is there a portion that you'd like me to read rather than  
7 the whole thing in interests of time?

8 Q. There is. The second page. There's a reference to  
9 Zachary Chesser on the --

10 A. By second page, do you mean the back of the first page or  
11 the second --

12 Q. The second document. The first page of the second  
13 document.

14 There's a reference to Zachary Chesser about halfway  
15 down the page, three-quarters of the way down the page.

16 THE COURT: And the question, Agent, is whether after  
17 you read that, does that jog your memory so that you can answer  
18 the question?

19 THE WITNESS: Might I also ask what the question is  
20 that you're asking to jog my memory about?

21 BY MR. SMITH:

22 Q. When you were the case agent familiarizing yourself with  
23 the case file of Nicholas Young, do you recall learning that  
24 Mr. Young's cell phone had only two communications with Zac  
25 Chesser on it?

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1 A. I do not know how many it had.

2 Q. And you do not recall after reviewing the document in  
3 front of you?

4 A. I do not.

5 Q. So, Agent Caslen, do you -- after your review of the case  
6 file, do you recall what prompted the FBI investigation  
7 besides -- into Mr. Young besides Zachary Chessser's  
8 communications with Mr. Young? Were there any other factors?

9 A. Are you sure you want me to answer that question?

10 Q. No, I -- sir, I'm only asking you about Mr. Young's  
11 involvement at work. Was there a work-related issue with  
12 Mr. Young at the Metro Transit Police Department that prompted  
13 the investigation to begin?

14 A. I believe there was information that came from his  
15 department regarding a room that the defendant had set up.

16 Q. That's what I'm referring to. What was that incident?  
17 What was that?

18 A. So I'm not familiar with all the details of that because I  
19 was not here back then, but there was a room that the defendant  
20 had set up that had some books and some things in it that the  
21 Metro Transit Police Department had informed us about.

22 Q. And would you -- do you recall whether that book was a  
23 Koran?

24 A. I don't recall exactly which books they were.

25 Q. Okay. Do you recall whether there were just newspaper

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1 articles --

2 A. Again, I wasn't here when all that happened, so I don't  
3 recall exactly what was there. I attempted to find the  
4 information and was not able to find exactly what they were,  
5 but I do recall a mention of newspaper articles.

6 Q. Do you recall that there was -- the investigation began  
7 partly because Mr. Young was having a beard dispute with his  
8 police department he was working for?

9 A. Did you say "beer" or "beard"?

10 Q. Beard, beard dispute.

11 A. I recall the defendant mentioning on his Facebook account  
12 that he was having a dispute with his department over his  
13 beard.

14 Q. But you don't recall whether that had anything to do with  
15 the beginning of the investigation?

16 A. I do not.

17 Q. So at some point after the investigation began in  
18 September 2010, Zac Chesser was arrested on terrorism charges,  
19 correct?

20 A. I don't think that's correct.

21 Q. At some point -- I mean, at some point after the  
22 investigation into Mr. Young began --

23 MR. KROMBERG: Objection, Judge. The witness (sic)  
24 is misstating the evidence that has already come in. What the  
25 witness said was the investigation started after Zachary

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1 Chesser was arrested.

2 BY MR. SMITH:

3 Q. Is that correct, what Mr. Kromberg said?

4 A. The investigation into Mr. Young started after Zachary  
5 Chesser was arrested.

6 Q. Correct.

7 A. Yes.

8 Q. But Mr. Chesser had been a subject of a counterterrorism  
9 investigation before Mr. Young was arrested, correct?

10 A. That is correct.

11 Q. Okay. Now, there would come a time after the  
12 counterterrorism investigation into Mr. Young began that you  
13 would interview Mr. Young about Zachary Chesser, right?

14 A. I did not interview the defendant about Zachary Chesser,  
15 no.

16 Q. Do you recall learning about Mr. Young's interview about  
17 Zac Chesser when you reviewed the case file when you came into  
18 this case?

19 A. Yes. The defendant was interviewed by the initial case  
20 agents.

21 Q. And do you recall what Mr. Young told the case agents on  
22 that occasion?

23 A. I do not recall exactly what he said.

24 Q. Well, do you recall that he said that he was shocked by  
25 Mr. Chesser's arrest and that it would be his religious duty to

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1 inform on Chesser if he ever learned that he was committing any  
2 acts of terrorism?

3 A. The interview wasn't recorded, so I was never able to  
4 listen to the defendant say that, so I do not recall exactly  
5 what he said.

6 MR. SMITH: Your Honor, I'm just handing up a  
7 document to refresh Mr. Caslen's recollection to see whether he  
8 recalls this from the case file. This is an important document  
9 because it's dated September 13, 2010. This is an important  
10 date for the entrapment defense.

11 THE COURT: All right.

12 MR. SMITH: So I'm handing up a document dated  
13 9/13/2010. It's an FBI 302 memorandum. This should have been  
14 in Nicholas Young's case file.

15 THE COURT: All right, hand it up.

16 BY MR. SMITH:

17 Q. Are you familiar with that document, Agent Caslen?

18 A. I recognize the document.

19 Q. And does it refresh your recollection about what Mr. Young  
20 may have told the interviewing agents on -- in September 2010?

21 A. In the interests of time, would you point me to exactly  
22 where in here that you want me to read?

23 Q. Does it refresh your recollection that Mr. Young told the  
24 interviewing agents --

25 THE COURT: Well, wait. He's asking you to point him

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1 to the paragraph. Where? On the first part of the page or the  
2 back? Where are you looking at?

3 MR. SMITH: Your Honor, it's on the second page.  
4 There's a conversation. It's only a one-page document, Your  
5 Honor, and Chesser's name is capitalized, so all of Mr. Young's  
6 comments in the 302 are clearly recognizable.

7 MR. KROMBERG: Your Honor, I would -- I object on the  
8 grounds of hearsay. It's improper to elicit the defendant's  
9 statements from the government witness, and when the government  
10 does it, it's an admission from a party opponent, but when the  
11 defendant is asking to get what the defendant already said to a  
12 government agent, that is not an admission from a party  
13 opponent.

14 THE COURT: He can ask, however, what, if anything,  
15 was the agent's understanding.

16 MR. SMITH: And state of mind, Your Honor, which  
17 is --

18 THE COURT: Wait, no. The agent's state of mind has  
19 nothing to do with this at this point.

20 MR. SMITH: Mr. Young's state of mind, Your Honor.

21 THE COURT: He cannot possibly go into the state of  
22 mind of somebody else. All you can say is what does that  
23 reflect the defendant having said to whoever was investigating  
24 him.

25 THE WITNESS: Yes, Your Honor.

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1 THE COURT: All right?

2 THE WITNESS: So I don't doubt the words by the  
3 interviewing agents that are on here, but again, I never heard  
4 the defendant say any of these things.

5 BY MR. SMITH:

6 Q. Thank you.

7 Now, Agent Caslen, I'm going to continue on the theme  
8 of Zac Chesser, because you've been in court during the  
9 testimony of this case, correct?

10 A. Correct.

11 Q. So it's correct that Zachary Chesser's image was published  
12 on the screens, and there was testimony from prior witnesses in  
13 this case concerning Zac Chesser and his possible relationship  
14 with Nicholas Young, correct?

15 A. Correct.

16 Q. Now, did there come a time when you learned that Zac  
17 Chesser himself said --

18 MR. KROMBERG: Objection, Judge. This is hearsay,  
19 but the defendant -- but the witness is being asked to say what  
20 Zachary Chesser said.

21 MR. SMITH: Your Honor, it's not being offered to  
22 prove the truth of the matter asserted.

23 THE COURT: Well, approach the bench.

24 (Bench conference on the record.)

25 MR. SMITH: There's two reasons we would use this.

Caslen - Cross

1119

1 The first is impeachment testimony. Agent Caslen has indicated  
2 that he has reviewed the entire case file, he's familiar with  
3 the investigative history of this case, and Mr. Chesser has  
4 indicated that he did not have extensive contacts with Nicholas  
5 Young. If Agent Caslen testifies that he did, this would be an  
6 impeachment statement not offered for its truth.

7 Second, the very fact that an individual made this  
8 statement is not being offered to prove the truth of the matter  
9 asserted. It is merely to -- it is a statement that has been  
10 made. The very fact that it's been made is significant and  
11 relevant, regardless of whether the truth is, the underlying  
12 truth is accurate.

13 The government can on redirect question the --  
14 whether this letter is, is authentic. They know it's authentic  
15 because they produced it to us.

16 Those, those are perfectly legitimate uses of this  
17 document to cross-examine a witness, and, Your Honor, since the  
18 government has made a big deal out of connecting Mr. Young to  
19 Chesser in its opening, I think it would be highly unfair to  
20 not allow the defense to cross-examine the case agent, who  
21 we've allowed to go onto the stand without objecting to his  
22 summary testimony when we could have.

23 So this is --

24 THE COURT: All right. Mr. Kromberg?

25 MR. KROMBERG: Judge, what Mr. Smith is referring to



Caslen - Cross

1120

1 is a letter that Zachary Chesser from jail wrote. If they  
2 wanted Zachary Chesser's testimony, they should have subpoenaed  
3 him, but to present his testimony through a letter is wrong.

4 And if we go that route, then I'm going to ask the  
5 agent, "What did Zachary Chesser say publicly on the Internet?"  
6 The answer is going to be, "I lied about everything I ever said  
7 to the government."

8 MR. SMITH: That's fine.

9 THE COURT: I'm going to allow it. I'm going to let  
10 the defense do it, and it opens the door.

11 MR. KROMBERG: Okay.

12 (End of bench conference.)

13 BY MR. SMITH:

14 Q. So when you were reviewing the case file into Mr. Young's  
15 investigation, did you learn that Mr. Young had a relationship  
16 with Zac Chesser?

17 A. I knew there was phone contact between the two.

18 Q. Was there anything more than that?

19 A. I believe based off of -- I believe both of them were  
20 members of the Muslim Student Association at George Mason.

21 Q. At George Mason.

22 Was it more extensive than that?

23 A. I don't, I don't recall finding anything else that led to  
24 believe it was more extensive.

25 Q. Did you learn the opposite, that Zac Chesser may have been

Caslen - Cross

1121

1 suspicious of Nick Young?

2 A. I actually do not recall that.

3 Q. Now, I'm going to hand you up a document to refresh your  
4 recollection. It's not being admitted into evidence. It's not  
5 being admitted for its truth. It is a letter from Zachary  
6 Chesser, which the date on the letter is an FBI stamp dated  
7 1/24/2017, but I think the actual underlying letter was drafted  
8 on August 9, 2016, and I'm going to direct your attention to  
9 page 3 and page 4.

10 So after you review the first page, just let me know  
11 if you've ever seen that document before.

12 A. I have seen this.

13 Q. And do you recall this -- that in this letter, Mr. Chesser  
14 said that when he was at George Mason, Mr. Young never said  
15 anything supporting jihad?

16 A. And that's on page 3, you said?

17 Q. 3 or 4.

18 A. Could you repeat the question?

19 Q. Do you recall in this investigation learning that  
20 Mr. Chesser said that Mr. Young at George Mason never said  
21 anything supporting jihad?

22 A. This letter does not specifically reference George Mason,  
23 but it does say that Nick had -- essentially, Nick had nothing  
24 to do with jihad.

25 Q. Thank you.

Caslen - Cross

1122

1                   Do you recall learning that Zac Chesser said that  
2 Mr. Young wasn't particularly knowledgeable about Islamic law  
3 and would not have known that being any kind of cop was  
4 forbidden?

5 A.   Yes. It says at that time, he wasn't particularly  
6 knowledgeable of Islamic law.

7 Q.   I'm just asking whether it refreshes your recollection.  
8 You don't have to read it.

9 A.   Oh.

10 Q.   Do you recall learning that Mr. Chesser said, "Nick was a  
11 transit cop, and none of us were even willing to reveal to him  
12 that we supported jihad"?

13 A.   Yeah.

14 Q.   And do you recall that an agent we're calling Jones at  
15 this trial would later acknowledge that Young had few contacts  
16 with Chesser?

17 A.   I don't recall that specifically.

18                   MR. SMITH: Okay. We can move on. Thank you.

19 Q.   Now, another individual of interest in connection with  
20 these interlocking investigations that we discussed during the  
21 government's case-in-chief was Hisham Hall. Are you familiar  
22 with Hisham Hall?

23 A.   I am.

24 Q.   And what is the nature of Hisham Hall's relationship with  
25 Mr. Young according to your investigation?

Caslen - Cross

1123

1 A. I understand the two to be friends.

2 Q. Has -- did you see the, the photo of Hisham Hall?

3 A. I did.

4 Q. Was that an arrest shot? Was that a kind of mug shot?

5 A. They're all driver's license photos, I believe.

6 Q. Has Hisham Hall ever been arrested or charged with any  
7 terrorism crimes?

8 A. I'm unaware of any arrests.

9 Q. Okay.

10 A. He has not been charged with a terrorism crime.

11 Q. Okay. Another individual that you mentioned was Peshwaz  
12 Waise. I don't know how you say -- is "Waise" --

13 A. I believe that's correct.

14 Q. Okay. Has -- and did you see his photograph published on  
15 the screen up there?

16 A. I did.

17 Q. Okay. Has Peshwaz Waise ever been arrested or charged  
18 with terrorism?

19 A. He's been arrested.

20 Q. Has he been charged with terrorism crimes?

21 A. I don't remember exactly what he was charged with, but he  
22 was locally arrested in Texas for going into a government  
23 building making statements related to jihad, I believe.

24 Q. Statements, was it?

25 A. I believe.

Caslen - Cross

1124

1 Q. Okay. And T. J. Singh? Did you see his photograph  
2 published?

3 A. I did.

4 Q. And has he been arrested?

5 A. Not to my knowledge.

6 Q. And not charged with terrorism crimes?

7 A. Not to my knowledge.

8 Q. Okay. There was another individual, Amine Khalifi. You  
9 recall him, correct?

10 A. I do.

11 Q. And his photograph was published on this TV screen?

12 A. Yes.

13 Q. Okay. And Mr. Khalifi has been arrested and indicted with  
14 terrorism charges, correct?

15 A. He's been convicted of terrorism charges, not just  
16 indicted.

17 Q. Correct. And at some point when you learned in your  
18 investigation -- when you researched the case file into  
19 Mr. Young, you learned that the undercover agent, Khalil, who  
20 testified in this trial, introduced Mr. Young to Amine Khalifi,  
21 correct?

22 A. No.

23 Q. You did not learn that?

24 A. I did not learn that he introduced him, as stated -- as he  
25 stated himself up here.

Caslen - Cross

1125

1 Q. Did you learn that Mr. Young was, encountered Amine  
2 Khalifi because he was going out to dinner with the UCE Khalil?

3 A. So what UCE had explained was there's circles of friends,  
4 and a group of friends went out to dinner, and Khalifi was with  
5 him, and at the dinner, the defendant was also there.

6 Q. Correct.

7 A. I do not recall that Khalil actually introduced him  
8 together.

9 Q. Yeah. I believe he said he didn't ask him --

10 THE COURT: Wait, wait. It's not for you to be  
11 testifying.

12 BY MR. SMITH:

13 Q. So do you recall an individual, Liban Mohamed?

14 A. I do.

15 Q. And his picture was published on the screen, correct?

16 A. That's correct.

17 Q. Did there come a time when you were researching the  
18 investigation into Mr. Young that you learned that the UCE  
19 Khalil would indicate that Mr. Young had nothing to do with any  
20 plots that were hatched by Liban Mohamed?

21 A. That is correct.

22 Q. Okay. So at any time during the course of the  
23 investigation into Mr. Young -- this was, this was a  
24 counterterrorism investigation, correct, that started in  
25 September 2010?

Caslen - Cross

1126

1 A. I don't recall the exact month it started, but yes, it was  
2 a counterterrorism investigation.

3 Q. But it was always a counterterrorism investigation. It  
4 wasn't an investigation into narcotics or any other sort of  
5 type of federal crime?

6 A. Well, the defendant was known to have --

7 Q. No, I'm only asking you about whether you, your role in  
8 this case as case agent is counterterrorism related.

9 A. No, that's not correct. If we're -- in the course of a  
10 counterterrorism investigation, if we uncover other crimes, we  
11 can investigate those as well. We're FBI agents, so we can  
12 investigate a wide variety of crimes, and it's not just  
13 centralized on counterterrorism investigation. If I find  
14 something else related to another federal crime, I can  
15 investigate that under the same case file, so yes.

16 Q. That is true. I am merely asking you whether the  
17 investigation that led to the indictment in this case was a  
18 counterterrorism investigation.

19 THE COURT: It was. For purposes of this case, it  
20 was.

21 MR. SMITH: Yes, thank you. Thank you, Your Honor.

22 Q. So at no point prior to the indictment in this case were  
23 you investigating Mr. Young for a hate crime, correct?

24 A. No.

25 Q. What is -- do you know what a hate crime is?

Caslen - Cross

1127

1 A. It's -- I don't know the exact definition of it.

2 Q. What is it -- just based on your knowledge as a --

3 MR. KROMBERG: Objection, Judge. Relevance.

4 THE COURT: Sustained.

5 BY MR. SMITH:

6 Q. So, Mr. Caslen, at trial, there were two witnesses for the  
7 government, Ian Campbell and Police Officer McNulty. Do you  
8 recall that?

9 A. It's "Ian" Campbell.

10 Q. "Ian" Campbell.

11 A. And Officer McNulty, correct.

12 Q. Officer McNulty.

13 Before Mr. Young's -- when was Mr. Young indicted?

14 A. I believe it was December of -- 2016?

15 Q. Right. At any point prior to December 2016, had you  
16 interviewed Ian Campbell about the subject of his testimony?

17 A. I don't recall when we interviewed Ian Campbell about the  
18 subject of his testimony, but I did interview Ian Campbell. I  
19 can't remember if it was pre or post-indictment.

20 Q. Was it after the -- was it after July of 2016?

21 A. I just said I don't remember when it was.

22 Q. Not even the year?

23 A. I don't. It could have been January 2017. You asked me  
24 if it was pre --

25 Q. How about with Officer McNulty? Do you recall vaguely



Caslen - Cross

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1 when you first interviewed him?

2 A. When I first interviewed -- when I personally first  
3 interviewed him was just a couple weeks ago.

4 Q. Okay. Thank you.

5 So there came a time when -- upon your review of the  
6 case file into Nicholas Young, you learned that there came a  
7 time when the counterterrorism investigation into Mr. Young  
8 learned that Mr. Young traveled to Libya in May of 2011,  
9 correct?

10 A. Yes. We, we learned that he traveled to Libya, correct.

11 Q. And at the time the counterterrorism investigation learned  
12 that Mr. Young traveled to Libya, was it -- did the  
13 counterterrorism investigation believe that Mr. Young had  
14 traveled to Libya to join a terrorist organization?

15 A. We were unsure why he traveled to Libya.

16 Q. Well, did there come a time when the counterterrorism  
17 investigation determined that Mr. Young traveled to Libya  
18 probably not for reasons related to terrorism?

19 A. I'm sorry, could you repeat the question?

20 Q. Sure. Did there come a time when the counterterrorism  
21 investigation into Mr. Young determined that Mr. Young had not  
22 traveled to Libya to join a terrorist organization?

23 A. Determined? No.

24 Q. Sorry, can you clarify? Did there come a time when the  
25 FBI analyzed and assessed that it was unlikely Mr. Young had

Caslen - Cross

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1 traveled to Libya to join a terrorist organization?

2 A. There was a less-than-high-confidence assessment made that  
3 it could have been for other reasons other than joining a  
4 terrorist investigation.

5 Q. And what were some of those other reasons?

6 A. I don't recall exactly the other reasons. Actually --

7 MR. KROMBERG: Objection, Judge. This is -- I think  
8 it might be easier to approach the bench on this.

9 THE COURT: All right.

10 (Bench conference on the record.)

11 MR. KROMBERG: Judge, at some point over the years,  
12 there was an assessment that said something about people we  
13 don't know.

14 THE COURT: Yeah, I've seen it.

15 MR. KROMBERG: However, the agent testified on direct  
16 that we only found out about Abu Salim Martyrs Brigade until  
17 2015. So to determine any relevance that might have to what  
18 the FBI thought on the basis of incomplete information before  
19 finding out about the Abu Salim Martyrs Brigade is irrelevant  
20 to anything in this case.

21 MR. SMITH: Your Honor, it's relevant because we're  
22 disputing the statement the government has made repeatedly in  
23 this case that Mr. Young traveled to Libya with the intent to  
24 join Abu Salim Martyrs Brigade. So documents from the  
25 government indicating there were facts and circumstances to

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1 suggest that individuals traveling to Libya in this time period  
2 could not have been doing it to join a terrorist organization,  
3 it goes to predisposition, Your Honor.

4 THE COURT: I'm not sure about that, but the problem  
5 is you've got the wrong witness for that as well, so I'm going  
6 to sustain the objection. This is not going very well. And  
7 again, it gets the case mired down in what one particular agent  
8 thought or didn't think. It's not going to help in the case.

9 MR. SMITH: Well, Your Honor, this -- the problem in  
10 this case is that we believe the government has selected which  
11 agents to present at trial in order to avoid certain documents.

12 THE COURT: But then you had an ability to subpoena  
13 any other witness that you thought you needed to subpoena.

14 MR. SMITH: We didn't receive a witness list until  
15 the government, the first day of trial. We repeatedly asked  
16 the government.

17 So, Your Honor, just for the sake of fairness, this  
18 is, this is impeachment evidence. This is refreshing  
19 recollection.

20 THE COURT: No, it's not, but here's the problem:  
21 You got the 302s. You had the names of the agents who were  
22 interviewing people.

23 MR. SMITH: They're often redacted, Your Honor.

24 MR. KROMBERG: Not on the classified --

25 THE COURT: Wait a minute. I can't hear you.

Caslen - Cross

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1 MR. KROMBERG: I'm sorry, the agents are not redacted  
2 from 302s that were classified, and they got them in both  
3 classified form and unclassified form.

4 THE COURT: Well, Ms. Moreno just got the names of  
5 the agents, didn't she, on the 302?

6 MR. KROMBERG: I believe that the names were on the  
7 302, but they certainly could have asked us if they were  
8 interested, and we would have come up with it.

9 THE COURT: No, I'm going to sustain the objection.

10 (End of bench conference.)

11 BY MR. SMITH:

12 Q. Agent Caslen, you familiarized yourself with the items  
13 seized from Mr. Young's home, correct?

14 A. I did.

15 MR. SMITH: So, Your Honor, we published some  
16 photographs yesterday from a camera that was taken -- yeah,  
17 from a camera that was seized from Mr. Young's home, and the  
18 government produced it to us in a file called "The Libya  
19 Camera."

20 THE COURT: All right.

21 BY MR. SMITH:

22 Q. Did you review the files in "The Libya Camera"?

23 A. I remember that.

24 Q. And so I'd like to publish some of these just to see if  
25 you recall --

Caslen - Cross

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1 THE COURT: What are the exhibit numbers?

2 MR. SMITH: Your Honor, the exhibit numbers are 2, 3,  
3 4, 5, 6, 7, 8.

4 THE COURT: Several of those are already in, correct?

5 MS. MORENO: Yes.

6 MR. SMITH: Yes, several of those are already in.  
7 Actually, we published -- I think yesterday, we published 5, 7,  
8 6 -- 4, 5 --

9 THE COURT: Mr. Kromberg, do you have any objection  
10 to 2 through 8?

11 MR. KROMBERG: If there are new ones, I'd like to see  
12 them first, but --

13 MR. SMITH: I showed them to Mr. Kromberg a couple of  
14 days ago.

15 MR. KROMBERG: I have no doubt that Mr. Smith is  
16 right, but I'd like to know what the exhibits are marked as at  
17 this point. It would be helpful if they had exhibit numbers on  
18 them, Judge.

19 MR. SMITH: Your Honor, our paralegal has them over  
20 there. He can walk over there and ask him.

21 MR. KROMBERG: No objection, Judge.

22 MR. SMITH: Okay.

23 THE COURT: Do we have -- hold on a second. What  
24 numbers went in?

25 THE CLERK: 4, 5, 6, and 7.

Caslen - Cross

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1 THE COURT: Only 4, 5, 6, and 7 are here.

2 MR. SMITH: Did you hand up the originals?

3 THE COURT: 2, 3, and 4 -- all right, do we have them  
4 all? Where are the defense exhibits?

5 MR. SMITH: Did you hand the originals to the court  
6 security officer?

7 MR. ENNS: I gave them to him yesterday.

8 MR. SMITH: Okay. You have 4, 5, 6, and 7. Can you  
9 give the other originals to the Court?

10 THE COURT: All right. Where's 2, 3, and 4?

11 MR. SMITH: And also, yeah, 2, 3, 4, 5, 6, 7, 8  
12 should be with the court security officer.

13 THE COURT: Just -- wait. Show the originals to the  
14 government so we're sure we're dealing all with the same thing.

15 MR. KROMBERG: Thank you, Your Honor.

16 MR. SMITH: And here is 8. Here's 8.

17 MR. KROMBERG: Thank you. No objection, Judge.

18 THE COURT: All right. Defense Exhibits 2 through 8  
19 are in evidence.

20 (Defendant's Exhibit Nos. 2, 3, and 8 were received  
21 in evidence.)

22 MR. SMITH: Okay. Now, can you put up No. 2?

23 Q. So, Agent Caslen, a witness has testified in this trial,  
24 correct, that Mr. Young entered Libya through Egypt, correct,  
25 in May of 2011?

Caslen - Cross

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1 A. Correct.

2 Q. And what is your understanding of what Mr. Young was doing  
3 in Egypt when he traveled through there into Libya?

4 A. My understanding of when I saw this was that Mr. Young was  
5 setting himself a guise of a tour before he went into Libya to  
6 join the Abu Salim Martyrs Brigade, similar to what he told Mo  
7 to do by touring Turkey.

8 Q. I see.

9 Can you publish Exhibit No. 3?

10 Is this the guise of the tour that you're referring  
11 to? What is the guise of a tour, according to you?

12 A. A guise would be going on a tour to make it look like  
13 you're there to be on a tour rather than your true intentions.

14 Q. I see. So what, what do you see in Defense Exhibit 3?  
15 What do you see? Does it look like Mr. Young is in front of a  
16 pyramid?

17 A. It does.

18 Q. Do you believe that Mr. Young is actually in front of a  
19 pyramid in that picture, or is it not real?

20 A. Oh, I do.

21 Q. Okay. So is this a guise of a tour, or is it a real tour?

22 A. I'm not sure.

23 Q. Not sure. Okay.

24 Can you publish Exhibit No. 4?

25 So, Agent Caslen, you and, I think, a couple of other

Caslen - Cross

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1 witnesses have testified that the government believes Mr. Young  
2 traveled to Libya to join Abu Salim Martyrs Brigade, correct?

3 A. That is correct.

4 Q. And you agree that these photographs were found on a  
5 camera that Mr. Young brought with him to Libya, correct?

6 A. They were found on a camera, I believe, in the defendant's  
7 truck. Whether he brought the camera with him to Libya or the  
8 SD card that was in it, it's my opinion that he brought the SD  
9 card with him to Libya.

10 Q. Right. And you have previously told other agents that you  
11 believe these are photos from Libya and they're interesting,  
12 right?

13 A. And that they're interesting?

14 Q. Yeah. You recall talking to other agents, saying, "Oh,  
15 these are photos from Libya. They're interesting"?

16 A. I don't recall mentioning they were interesting to other  
17 agents.

18 MR. SMITH: Okay. Can you go to Defense Exhibit 5?

19 Q. Have you seen this photograph?

20 A. I have.

21 Q. And when did you review these photographs?

22 A. After the SD card and the camera were seized.

23 Q. Okay. So when you saw these photographs, what was your  
24 impression of the nature of Mr. Young's trip to Libya?

25 A. Similar to what I said before. I -- I'm sorry, are you



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1 asking me what I believed his trip to Libya was?

2 Q. Yeah. Would it be -- as an investigator, when you're  
3 investigating whether Mr. Young traveled to Libya to join a  
4 terrorist group, would, would documents like photographs from  
5 the trip be important to the inquiry?

6 A. Yes.

7 Q. Okay. So, so these photographs were important to the  
8 inquiry about whether Mr. Young had joined a terrorist group in  
9 Libya, right?

10 A. Well, this one not so much in particular.

11 Q. No? Why not? It looks like -- I don't know, it's hard to  
12 say who's in here, but it looks like a couple of elderly people  
13 that are on a beach, they're giving peace signs.

14 MR. KROMBERG: Your Honor, the government will  
15 stipulate that not every photograph taken by a person in Libya  
16 going to a terrorist group has to be of members of a terrorist  
17 group.

18 THE COURT: All right.

19 MR. SMITH: We appreciate that stipulation.

20 Can you go to Defense Exhibit No. 7?

21 Q. Did you see that photograph?

22 A. I did. I saw it on the defendant's Facebook page as well,  
23 I believe.

24 Q. Oh, so he published his photos on Facebook from Libya?

25 A. I believe so.

Caslen - Cross

1137

1 Q. Did that indicate to you as an investigator that he was  
2 attempting to hide his travels there?

3 A. No.

4 Q. No? Didn't Mr. Young publish on Facebook that he had  
5 actually -- are you familiar on Facebook with the function that  
6 allows you to indicate where you are at any given time  
7 geographically?

8 A. You put your, like, your hometown? Is that what you're --

9 Q. Right.

10 A. I am, yes.

11 Q. Your hometown or where you're visiting maybe?

12 A. I don't know so much about visiting, but yes, the  
13 hometown.

14 Q. So in your review of the case file in this case, did you  
15 ever see that Mr. Young had posted something about a hometown  
16 in Libya?

17 A. I did. I believe his hometown on Facebook was Misrata.

18 Q. Right. So did that indicate to you as an investigator  
19 that Mr. Young was attempting to hide his trip to Libya?

20 A. No.

21 Q. Agent Caslen, early in the trial, ICE Special Agent  
22 Gervino testified about what Mr. Young told him on a reentry  
23 interview in May of 2011, correct?

24 A. I'm sorry, what he was what?

25 Q. The ICE Agent Gervino, Special Agent Gervino testified in

Caslen - Cross

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1 this trial about his reentry interview with Mr. Young in May of  
2 2011, correct?

3 A. Correct.

4 Q. And you learned at some time that Mr. Young told Agent  
5 Gervino that he went to Libya?

6 A. Correct.

7 Q. That he was in Benghazi, that he was in Misrata?

8 A. I believe he said Benghazi and Misrata.

9 Q. Okay. So, Mr. Caslen, you've testified about these  
10 e-mails you found in Mr. Young's possession from an individual  
11 named Mohamed in Libya, and you've testified about how you sort  
12 of uncovered the trail of what those, what those e-mails said,  
13 right?

14 A. Yes.

15 Q. And one of the e-mails, you indicated, was an exchange  
16 between Mohamed and Nicholas Young about night vision scopes,  
17 right?

18 A. Correct.

19 Q. At what -- and do you recall what that exchange  
20 essentially -- can you summarize that exchange?

21 A. In summary, mohamed\_2060, as we referred to him yesterday,  
22 was asking the defendant to send variations of night vision  
23 rifle scopes to him. The defendant stated that he would have  
24 to look into it, but he'd buy, I believe it was, \$1,500 worth  
25 if he could. He found out that it was illegal to send them

Caslen - Cross

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1 overseas, so he couldn't send them because they would be seized  
2 by Customs, and rather -- in lieu of sending them, he offered  
3 to bring money the next time he went back or purchase things in  
4 Egypt and then bring them over.

5 Q. So when did you first learn about that e-mail exchange  
6 when an individual named Mo from Libya asked for night vision  
7 scopes and Nick said, "No, I'm not going to do it. It's  
8 illegal"? When, when did that come to your attention as the  
9 case agent in this?

10 A. To correct the question, it was actually Mohamed, not Mo.

11 Q. Mohamed, right. Mohamed\_2060.

12 A. Yes. We're calling him mohamed\_2060.

13 So we learned about that when we found the printed  
14 e-mail that is a government exhibit in the center console of  
15 defendant's pickup truck during the search of his vehicle. We  
16 found that e-mail, and then we subsequently received -- through  
17 legal service received the rest of them.

18 Q. Okay. So you learned about this exchange after Mr. Young  
19 was arrested for the charges in this case, correct?

20 A. Correct.

21 Q. Okay. Now, did you determine who mohamed\_2060 is?

22 A. It was a contact of the defendant's in Libya, but I do not  
23 know the identity of the individual.

24 Q. So you do not know whether this individual was a member of  
25 something that's being called the Abu Salim Martyrs Brigade?

Caslen - Cross

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1 A. I believe in some of the other e-mails that the defendant  
2 said under the e-mail address MALIKtheAmerican, he referred to  
3 other brothers in the brigade, so I believe that he was.

4 Q. You're speculating, right? Is that fair to say?

5 A. I believe it's in, it's in the e-mail.

6 Q. You're referring to an e-mail in which he says "brothers,"  
7 correct?

8 A. I believe so.

9 Q. And do you have any e-mails indicating "brothers" means  
10 mohamed\_2060?

11 A. I would have to see the e-mail to know the exact, the  
12 exact content of what it was, but --

13 Q. You testified --

14 A. -- I believe that mohamed --

15 MR. KROMBERG: Objection.

16 THE COURT: Wait. You're talking over the witness  
17 again.

18 THE WITNESS: The way I believe the MALIKtheAmerican  
19 e-mails to go was that the defendant was referring to  
20 mohamed\_2060 and the other individuals that he e-mailed from  
21 the MALIKtheAmerican e-mail address to be members of Shuhada  
22 Brigade.

23 Q. I'm only asking to confirm that that is your  
24 interpretation of various e-mails, but you do not have a  
25 document indicating a direct connection, correct?

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1 A. I'd have to see the e-mail to see exactly how it was  
2 phrased, because I think that may be a direct connection.

3 Q. As you testify right now, you do not recall?

4 A. I do not recall.

5 Q. Thank you.

6 So after Mr. Young returned from Libya, there came a  
7 time when the counterterrorism investigation learned that --  
8 from a CBP officer that Mr. Young had complied with all of the  
9 rules for moving body armor overseas, correct?

10 A. I don't recall exactly which document you're speaking of.

11 Q. I'll try to refresh your recollection. Maybe I can  
12 refresh it by just talking about it with you. There came a  
13 time when FBI agents learned from an individual, an officer  
14 named Chrispen, a CBP officer named Chrispen that after  
15 Mr. Young returned from Libya, he actually -- body armor was  
16 seized, and then he returns to Customs to try to have it given  
17 back to him.

18 Do you recall that sort of sequence of events?

19 A. I don't recall him coming back to get it seized, but I do  
20 recall, for example, the letter that the State Department sent  
21 him yesterday about it.

22 Q. Okay. That's sufficient. Thank you.

23 Now, when Mr. Young returned from Libya, he had an  
24 interview with an individual, an agent on this investigation,  
25 and Mr. Young tells the agent he was with migrant workers and

Caslen - Cross

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1 black Africans in Libya during his trip in May 2011, correct?

2 A. I don't recall exactly him saying that.

3 Q. But do you recall an interview generally speaking, just to  
4 speed this along, that there was an interview with an agent in  
5 this case who we're calling Jones in this case after Mr. Young  
6 returned from Libya, and Mr. Young described to Agent Jones the  
7 types of people Mr. Young was with in Libya?

8 A. I recall that happening. I recall the document. I do not  
9 recall the interview because I was not here when that happened.

10 Q. So seeing the pictures we looked at today, do you have any  
11 reason to believe that Mr. Young was misleading Agent Jones  
12 about the types of individuals he was with in Libya?

13 A. I would say the physical descriptions of them are  
14 correct --

15 Q. Okay. You can't --

16 A. -- but I would say that the, the nature of who they were  
17 and what he was doing over there, I don't think he was  
18 forthright with.

19 Q. So during that interview that I'm referring to with Agent  
20 Jones which is after Mr. Young returns from Libya, Mr. Young is  
21 telling Agent Jones about his trip, and fair to say, you know,  
22 that's unusual for a police officer in the Washington, D.C.,  
23 police force to be traveling to Libya, correct?

24 A. Depends for what purpose.

25 Q. What purpose would it be usual for?

Caslen - Cross

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1 A. I mean, if a Libyan police officer is on the D.C. Metro  
2 Police Department and he goes home to visit family, I don't see  
3 that as unusual.

4 Q. Fair enough. But for someone who is not a Libyan.

5 A. For the purposes of what the defendant went over there  
6 for, I would say it's unusual.

7 Q. Okay. All right. So during this interview with Agent  
8 Jones, after Mr. Young explains what he was doing in Libya,  
9 Agent Jones inquired whether Mr. Young would have any interest  
10 in being a confidential human source for the FBI, correct?

11 A. So in speaking with Agent Jones, I understood that to be  
12 more of a ruse to interview the defendant more than an actual  
13 attempt to recruit him as an informant.

14 Q. Okay. Do you recall that after this meeting when they  
15 discussed serving as a confidential human source in September  
16 of 2011, Agent Jones met with the defendant on a, on a second  
17 occasion?

18 A. I believe there were two interviews afterwards.

19 Q. And was the second one in Richmond?

20 A. I don't recall where, but it was somewhere in Virginia.

21 Q. So was the second meeting also a ruse, or was it actually  
22 to discuss serving as a confidential human source?

23 A. In my conversations with Agent Jones, I understand it to  
24 also be similar to the purpose of the first one.

25 Q. And, and do you understand that after that meeting, Agent



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1 Jones sent the defendant multiple texts to inquire whether he  
2 was still interested in serving as a confidential human source?  
3 I think it would have been, you know, September and October  
4 2011?

5 A. I recall seeing text messages when I was doing discovery  
6 for you, but I don't recall the nature of the text messages.

7 Q. And were those text messages ruses as well, or did you not  
8 discuss that with Agent Jones?

9 A. Again, I don't know the nature of the text message, so I  
10 wouldn't be able to tell you.

11 MR. SMITH: So, Your Honor, we're just going to  
12 publish a document -- excuse me. We're going to refresh  
13 Mr. Caslen's recollection with a document. We're not going to  
14 publish it. And I'm going to give it to the prosecution first  
15 just to correct -- refresh the agent's recollection.

16 THE COURT: Ladies and gentlemen, I'm going to give  
17 you your break for 15 minutes, all right? We'll reconvene at  
18 quarter after.

19 (Recess from 11:01 a.m., until 11:18 a.m.)

20 (Defendant and Jury present.)

21 THE COURT: All right, Mr. Smith.

22 MR. SMITH: Thank you, Your Honor.

23 Q. So, Agent Caslen, we were just discussing Agent Jones's  
24 attempt, a discussion with the defendant, Mr. Young, about  
25 becoming an undercover informant. I think you had testified

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1 that those discussions were a ruse designed to elicit an  
2 interview with the defendant.

3 A. To my understanding and based on my discussions with Agent  
4 Jones.

5 Q. Okay. I'd just like to hand you a document to see if this  
6 refreshes your recollection about those, the nature of the  
7 conversations between Jones and the defendant. It's an FBI  
8 memorandum dated November 7, 2011. It's not being published to  
9 the jury. So let me know if you, if you recognize that  
10 memorandum after you review it. It's one page.

11 Well, first, what does it -- have you ever seen that  
12 memorandum?

13 A. I recognize it.

14 Q. And what's the date on that?

15 A. It's dated November 7, 2011.

16 Q. And does it indicate whether Agent Jones sincerely  
17 attempted to recruit the defendant as a confidential human  
18 source? And by "sincerely," I mean --

19 MR. KROMBERG: Objection, Judge. If it's being  
20 offered to refresh the agent's recollection --

21 THE COURT: Sustained.

22 BY MR. SMITH:

23 Q. I'm asking -- Agent Caslen, I'm asking you whether that  
24 document refreshes your recollection as to whether the attempt  
25 to recruit Mr. Young was a ruse or was a sincere effort.

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1 MR. KROMBERG: Objection, Judge. The witness has  
2 never said that he failed to recall. The witness said what he  
3 said. He didn't say he didn't remember.

4 THE COURT: Well, wait. Does that in any way refresh  
5 your memory about your conversations with Agent Jones  
6 concerning whether his approach to the defendant was a genuine  
7 approach to enlist him as a confidential source or was a ruse?

8 THE WITNESS: No, Your Honor. I specifically  
9 remember a phone call between myself and Agent Jones regarding  
10 my prior testimony.

11 THE COURT: Then the answer is it doesn't change his  
12 testimony in that respect.

13 MR. SMITH: Right. Thank you.

14 Q. In reviewing the case file into the investigation into  
15 Mr. Young, did there come a time when you learned that  
16 Mr. Young informed the FBI that he gave comments to the FBI  
17 about his negative views of Anwar Awlaki? Did you come a --  
18 did there come a time when you learned that Mr. Young had said  
19 something negative about Anwar Awlaki to the counterterrorism  
20 investigators?

21 A. I am unaware of that.

22 Q. Can you remind us who Anwar Awlaki is?

23 A. Anwar Awlaki was the imam at the Dar Al-Hijrah mosque  
24 right after 9/11 who left the country to go, essentially landed  
25 in Yemen and became a prominent figure in al Qaeda and the

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1 Arabian Peninsula.

2 Q. And there's a document in evidence that was recovered from  
3 Mr. Young's home that might have related to Anwar Awlaki,  
4 correct?

5 A. There were issues of *Inspire* magazine that were printed.

6 Q. Okay. So that would relate to Anwar Awlaki, would you  
7 say?

8 A. Correct.

9 Q. Okay. But there was also another piece of evidence,  
10 wasn't there, like a disc, maybe something called The  
11 Awakening?

12 A. It was the Hereafter series.

13 Q. Hereafter.

14 A. There were two, volumes 1 and 2 in defendant's residence.

15 Q. And what is the connection between the Hereafter series  
16 and Anwar Awlaki?

17 A. I believe Sheikh Anwar Awlaki was the one who recorded the  
18 series.

19 Q. Okay. So I'm going to hand you a document to refresh your  
20 recollection -- see if it refreshes your recollection.

21 MR. KROMBERG: Objection.

22 THE COURT: I don't think there was anything he said  
23 he couldn't remember, so there's nothing to be refreshed at  
24 this point.

25 MR. SMITH: Your Honor, what he's -- what I'm

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1 refreshing is --

2 THE COURT: Just ask the question. The only way you  
3 can refresh a memory is if the witness says, "I don't  
4 remember."

5 MR. SMITH: Your Honor, I did ask the question. I  
6 asked him whether he recalls if Mr. Young informed the FBI that  
7 he had a negative view of Anwar Awlaki, and Mr. Caslen replied,  
8 "I do not recall ever seeing that."

9 THE WITNESS: That is correct.

10 MR. SMITH: So I would like to refresh his  
11 recollection as the case agent.

12 THE COURT: All right, all right.

13 BY MR. SMITH:

14 Q. It's September 29, 2011, and it's page No. 2. It is an  
15 FBI 302 memorandum, I believe. I think it's with Agent Jones.

16 A. I'm sorry, could you repeat the page number?

17 Q. Page 2.

18 A. Page 2? Thank you.

19 Q. And if you look to the bottom of page 2, let me know if  
20 that conversation refreshes your recollection.

21 A. So again, I don't doubt that the agent who wrote the --

22 Q. I'm only asking you if it refreshes --

23 A. It doesn't refresh my recollection of anything I  
24 personally know the defendant to have said.

25 Q. That's all I'm asking. So you do not -- so you do not

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1 recall after reviewing that memorandum that Mr. Young said  
2 Anwar Awlaki went off the deep end?

3 THE COURT: He said he didn't remember it. Let's  
4 move on.

5 BY MR. SMITH:

6 Q. Okay. Do you recall that in the course of your review of  
7 the case file in this investigation, that Mr. Young told one of  
8 the case agents investigating Mr. Young that the Koran states  
9 that killing one person is like killing the world, and Bin  
10 Laden led to the murder of people, correct?

11 MR. KROMBERG: Objection, Your Honor. This is  
12 calling for hearsay because it's not offered against the  
13 party --

14 MR. SMITH: State of mind, Your Honor.

15 MR. KROMBERG: It's offered to establish that Mr. --  
16 someone wrote that Mr. Young said something. That's -- you  
17 can't do that when you are representing Mr. Young.

18 THE COURT: I'm sustaining the objection. Let's move  
19 on.

20 MR. SMITH: And the objection is it's not offered for  
21 its truth. It's offered for the state of mind of the  
22 individual whose predisposition is at issue in this case.

23 THE COURT: I sustained the objection.

24 BY MR. SMITH:

25 Q. Now, did there come a time in September of 2012 where

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1 Mr. Young gave an interview with Customs agents at the Canadian  
2 border? Do you recall that in your review of the case file?

3 A. I recall there being an interview at the Canadian border.  
4 The exact date I do not recall, though.

5 Q. Do you recall what the nature of the interview was?

6 A. I believe the defendant was reentering the country.

7 Q. And what, what is significant about that date,  
8 September 14, 2012, to you? Is it, is it nearby a significant  
9 date in terms of counterterrorism investigations?

10 A. September 14?

11 Q. September 14, 2012.

12 A. It's a few days after September 11?

13 Q. In September '12. So are you familiar with the embassy  
14 attack in Benghazi?

15 A. Yes, I am.

16 Q. Okay. Do you believe that the, the attack on the Benghazi  
17 Embassy which killed Ambassador Stevens in Benghazi, that  
18 occurred on about September 11, 2012?

19 A. I believe it was September 11, 2012, correct.

20 Q. Okay. And do you recall whether the CBP agents had an  
21 interview with Mr. Young in which they inquired whether he  
22 would share some of his information about his travels to Libya  
23 to help them investigate the attack on the Benghazi Embassy?

24 A. I don't recall the nature of that interview and what was  
25 actually discussed.

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1 MR. SMITH: Okay. So I'd like to hand up a document  
2 to see if it refreshes the agent's recollection.

3 THE COURT: Yeah, we've had a complaint from one of  
4 the jurors that when you move from the podium, they cannot hear  
5 you.

6 MR. SMITH: Sorry, Your Honor.

7 THE COURT: You need to --

8 MR. SMITH: I'd like to -- I'd like to move a  
9 document -- I'd like to provide a document to Agent Caslen  
10 dated September 14, 2012, and it's an FBI 302 memorandum  
11 reflecting an interview at the Canadian border with Customs.  
12 Q. First you can just let me know if you've ever seen that  
13 memorandum.

14 A. I have.

15 Q. You have? And can you look at the bottom of page 2 to the  
16 top of page 3? I'm referring to the page numberings at the  
17 bottom of the page, so I think it's the first -- the last full  
18 paragraph on 2 and then continues up to the top of 3.

19 And you can just -- you don't have to read it. You  
20 can just let me know if that refreshes your recollection of the  
21 review -- your prior review of that document.

22 A. Yes.

23 Q. Okay. And now, do you recall that the CBP agents during  
24 the interview on September 14, 2012, were interested in  
25 Mr. Young's knowledge of Libya in connection with the recently



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1 conducted Benghazi attack on September 11, 2012?

2 A. So again, as with the rest of the interviews that were  
3 done outside my presence, I don't doubt the information in the  
4 302, but my personal knowledge of what was asked of him, I  
5 don't have any.

6 Q. Do you recall whether Mr. Young offered to help in  
7 connection with their investigation into Benghazi?

8 A. Again, I wasn't there during the interview, so I wouldn't  
9 know if that -- exactly how that was phrased.

10 Q. Fair enough.

11 Now, Agent Caslen, did there come a time in your  
12 review of the case file that you learned that at another point  
13 in September 2012, the counterterrorism investigators in this  
14 case, Agent Jones reached out to Mr. Young to discuss the  
15 Benghazi attacks in September -- on September 11, 2012?

16 A. I do recall an interview with Agent Jones around that  
17 time.

18 Q. And do you recall the subject matter that Agent Jones  
19 discussed or was inquiring of Mr. Young about?

20 A. I believe it was related to the attack.

21 Q. And do you recall whether Agent Jones was interviewing  
22 Mr. Young, doing his job as an investigator, what does this guy  
23 know about Libya? He's traveled there, the September 11  
24 Benghazi attacks had just occurred, and Agent Jones wanted to  
25 know if Young had some useful information.

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1 MR. KROMBERG: Objection, Judge. I think we need to  
2 approach.

3 THE COURT: Yes, let's go.

4 (Bench conference on the record.)

5 MR. KROMBERG: Your Honor, I think Mr. Smith is doing  
6 his job properly in the sense of the way he's asking questions.  
7 However, the answers that he's - he's asking, "Is it a ruse or  
8 not?" and he's pressing Special Agent Caslen, who's going to  
9 say, "I think it was a ruse. We wanted to keep our eye on him  
10 because he was dangerous, and that's why we were talking to  
11 him."

12 And if he keeps asking that question, we're  
13 eventually going to get to that answer, which I thought we  
14 don't want to get to.

15 MR. SMITH: Your Honor, every time we try to use a  
16 document to cross-examine the witness, they threaten to bring  
17 up guns. We're noting this for the record. It's highly  
18 inappropriate, 403. This is law of the case on the guns.  
19 Every time we have attempted to use a cross-examination  
20 document with the witness --

21 THE COURT: Look, the problem is this is a very  
22 unusual and, I think, really improper cross-examination because  
23 you don't have the right witness. The correct witness in this  
24 case are the witnesses who are interviewing the defendant, who  
25 can then testify: This is what I did, or this is -- this is,

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1 like, second- and third-hand hearsay.

2 MR. SMITH: Your Honor, his testimony on direct, this  
3 exact witness has testified in the exact areas Your Honor is  
4 putting her finger on. He has testified about what other  
5 agents learned in this investigation. We are merely attempting  
6 to cross him on the same -- within the same parameters that the  
7 government conducted direct on, and this is --

8 THE COURT: All I can tell you is you ask a question.  
9 If the answer is an appropriate answer to the question and not  
10 trying to sneak something in that's not proper, but if it's  
11 responsive to your question, you've asked the question.

12 MR. SMITH: I'm only asking whether he recalls  
13 something. I'm not going to say, "Is it true?"

14 MR. KROMBERG: Well, I think that perhaps Mr. Smith  
15 is not focused on the problem. The problem is that he asked  
16 the question was this a ruse, was this another ruse. Then the  
17 answer may be yes, it was another ruse because, and then we  
18 run --

19 THE COURT: Then we'll see.

20 MR. SMITH: Well, I'll stop there. If he says this  
21 is a ruse, then I will inquire no further.

22 THE COURT: That's not the question right now. All  
23 right, let's go back.

24 MR. KROMBERG: Thank you.

25 (End of bench conference.)

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1 BY MR. SMITH:

2 Q. Okay. So, Agent Caslen, I was asking you whether in your  
3 review of the case file in the investigation of Mr. Young, you  
4 came to learn about an interview conducted in September of 2012  
5 by Agent Jones with Nicholas Young concerning the attacks in  
6 Benghazi in September 2012. Are you familiar with -- you said  
7 you were familiar with that interview?

8 A. I believe that was a topic discussed.

9 Q. Okay. And do you recall whether during this interview,  
10 Mr. Young said he was shocked by the attacks in Benghazi on  
11 Ambassador Stevens?

12 A. I don't recall exactly what was said during the interview,  
13 because again, I was not present for the interview. I just  
14 remember that in discussions I had with Agent Jones, that that  
15 topic was discussed.

16 Q. That topic was discussed.

17 A. Yes.

18 Q. Okay.

19 A. And as far as the content of it, I don't know exactly what  
20 was said between the parties.

21 Q. Okay. And do you recall that -- on a slightly separate  
22 subject, do you recall that Mr. Young said that Ambassador  
23 Stevens was well liked among the individuals he had met in  
24 Benghazi -- excuse me, in Libya?

25 A. Again, I don't remember the exact content of what was said

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1 because I was not present.

2 THE COURT: Well, again, I just want to remind the  
3 jury that when a lawyer makes a statement and the witness says,  
4 "I don't know," or "I don't recall," the lawyer's statement is  
5 not evidence.

6 MR. SMITH: Now, we are just -- one more refreshing  
7 of the recollection, and then we'll move on.

8 Q. So this is a document dated October 9, 2012. It's an FBI  
9 302 memorandum with Agent Jones and Mr. Young. And the  
10 conversation is on the second page concerning --

11 A. The back of the first page?

12 Q. The back of the first page. It's page 2. There should be  
13 a page 2 at the bottom of the page. And you can see references  
14 to Stevens, Benghazi.

15 A. I see it.

16 Q. And does that refresh your recollection?

17 A. Again, I don't doubt the, the -- what was put in here by  
18 Agent Jones himself, but I was not present during the  
19 interview, so I don't know exactly how the defendant would have  
20 phrased it. The interview wasn't recorded.

21 Q. Why wasn't it recorded?

22 A. I do not know.

23 Q. Okay. Agent Caslen, you've testified about some of these  
24 LiveLeak -- you testified about how you investigated the  
25 defendant's LiveLeak account, correct?

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1 A. I observed the defendant's LiveLeak account and read some  
2 of the comments, correct.

3 Q. And so when did you join the investigation again as the  
4 case agent? Which month was it again?

5 A. October 2015.

6 Q. October 2015. Had there been any investigations into  
7 analysis of Mr. Young's LiveLeak account prior to October 2015?

8 A. I believe so.

9 Q. And do you recall the nature of this analysis of  
10 Mr. Young's LiveLeak account?

11 A. Are you asking me at the time that I joined the  
12 investigation, did I know, or --

13 Q. Well, did there come a time when you learned about the --  
14 you joined in October 2015, so did you learn about a prior  
15 investigation prior to your arrival as the case agent on this  
16 case? Did you learn about a previous investigation -- analysis  
17 of Mr. Young's LiveLeak account that had been conducted?

18 A. After the defendant was arrested, in going through the  
19 case file for discovery, I found a document where it had been  
20 discussed.

21 Q. And do you recall the key judgments from that memorandum?

22 A. I do not.

23 Q. Well, do you recall just generally what the memorandum was  
24 analyzing?

25 A. Comments that were placed onto the account by the

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1 defendant.

2 Q. And, and what was the purpose of the analysis of the  
3 comments that were placed on LiveLeak?

4 A. Well, the document was written, if I recall correctly, by  
5 one of our intelligence analysts, and the purpose of what they  
6 do for the case team and the case agents is to provide guidance  
7 to the case agents on things that they have observed, and they  
8 put things in memorandums that help us make decisions later on.

9 Q. Do you recall whether this analysis determined that Slow  
10 Decline -- and Slow Decline is Mr. Young -- that he  
11 consistently presents himself on LiveLeak as a conservative,  
12 patriotic veterans supporter?

13 MR. KROMBERG: Objection, Your Honor.

14 THE COURT: Wait, wait, wait.

15 MR. KROMBERG: We tried to get into the LiveLeak  
16 Government Exhibits 8-501 and 502, and the Court barred us from  
17 going into what was said on the LiveLeak account. At this  
18 point, it's wrong for the defense to be able to go into the  
19 LiveLeak account, the comments made on the LiveLeak account,  
20 when we were not allowed to go into the LiveLeak account.

21 MR. SMITH: Your Honor will recall it was only  
22 specific messages that Your Honor excluded, and Mr. Caslen just  
23 testified about his investigation into the LiveLeak account.

24 THE COURT: Well, I think if you're --

25 MR. SMITH: This was on direct.

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1           THE COURT: But on cross, if you're going to start  
2 going into specific elements within that account, and I don't  
3 quite know where that's all being tied up, the government then  
4 has a right to ask if they can go into other comments on the  
5 same account, so, I mean, you need to think about where you're  
6 going with this.

7           MR. SMITH: Your Honor, can I ask the government to  
8 explain what it just meant by --

9           THE COURT: Well, you know what's going on. So ask  
10 the question if you want to, or move on to something else.

11           MR. SMITH: Your Honor, we need a bench conference.  
12 Can we have that, please?

13           THE COURT: No, we've had too many. Let's go.

14 BY MR SMITH:

15 Q. Okay. So you're familiar with the entire case file from  
16 the beginning of the investigation in September 2010 until the  
17 arrest in August 2016, correct?

18 A. I don't know the contents of every single document in  
19 there, but after the defendant was arrested, I've reviewed the  
20 case file and produced relevant documents in discovery as well.

21 Q. So do you know, after -- upon your review of the entire  
22 case file from September 2010 to August 2016, did you find any  
23 evidence that the defendant ever actually spoke to a member of  
24 ISIS?

25 A. So there was no evidence that said that he had spoken



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1 directly to it, just the, the e-mails sent to individuals that  
2 he had been in with Libya that he had later told Mo were  
3 like-minded with the brothers that Mo was with.

4 Q. Thank you.

5 So your testimony is that he's never directly spoken  
6 with anyone in ISIS according to your information?

7 MR. KROMBERG: Objection. The testimony is what the  
8 testimony is.

9 THE COURT: I think that is correct. Sustained.

10 BY MR. SMITH:

11 Q. Now, upon your review of the case file between September  
12 of 2010 and August 2016, did you find any evidence that  
13 Mr. Young ever actually materially supported a member of ISIS?

14 A. No.

15 Q. So upon your review of the case file between September  
16 2010 and August '16, is it fair to say that the ISIS connection  
17 in this investigation was notional?

18 A. I would, I would say that's not entirely accurate given  
19 the fact that the defendant stated he was with brothers in  
20 Libya that were -- he later told the notional Mo that those  
21 brothers were like-minded with the brothers you are with, and  
22 I'm wondering if they had pledged to your brothers. So we've  
23 never found any evidence that the defendant was able to confirm  
24 whether or not that was true.

25 Q. You testified earlier today that Mr. Young's exchanges

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1 with a Mo 2060 regarding night vision scopes, you discovered  
2 that after you investigated Mr. Young, correct -- arrested  
3 Mr. Young, correct?

4 A. Correct.

5 Q. Thank you.

6 And after you charged Mr. Young, correct?

7 A. I can't remember if that was before or after indictment.

8 Q. Okay. So at some point during the investigation into  
9 Mr. Young, you interviewed some of his colleagues that worked  
10 at the Metro Transit?

11 A. Correct.

12 Q. Okay. And do you recall an interview with a retired  
13 Officer Eubanks?

14 A. I do recall interviewing him.

15 Q. And what did Mr. Eubanks say to you?

16 MR. KROMBERG: Objection, Judge.

17 THE COURT: Oh, that clearly would be hearsay, so  
18 I'll sustain the objection.

19 MR. SMITH: Your Honor, it's not being offered to  
20 prove the truth of the matter asserted.

21 THE COURT: What's it being offered to prove then?

22 MR. SMITH: It's offered to be -- it's offered to be  
23 proved that someone who worked with Mr. Young had stated --

24 THE COURT: Wait, wait, wait, wait. Approach the  
25 bench on this one.

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1 (Bench conference on the record.)

2 THE COURT: Go ahead.

3 MR. SMITH: The very fact that an officer working  
4 with Mr. Young made this statement to the FBI is irrelevant  
5 apart from its underlying truth.

6 THE COURT: What's the statement?

7 MR. SMITH: The statement is that he never knew  
8 Mr. Young to be radical in any way, he was shocked by the  
9 charges, he never had any relationship --

10 THE COURT: You have got to call the person, Eubanks  
11 himself, to put that in.

12 MR. SMITH: Well, Your Honor, we've tried our  
13 hardest, but we can't, so --

14 THE COURT: No, you can't do it this way. You're  
15 offering it for the truth of its contents. That's the only  
16 point. No. Objection sustained.

17 (End of bench conference.)

18 BY MR. SMITH:

19 Q. Upon your review of the case file into this investigation,  
20 at what point did the investigators recover the Nazi items that  
21 are in the evidence in this case?

22 A. The photographs -- some of the photographs of the  
23 defendant in his Nazi attire were uncovered in 2011. The rest  
24 of the physically seized items were seized post-arrest in 2016.

25 Q. And so the items you introduced today were seized from

Caslen - Cross

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1 Mr. Young's home in August of 2016, correct?

2 MR. KROMBERG: Objection, Judge. There's a lot of  
3 items that were introduced today. I'm not sure that that's  
4 correct.

5 THE COURT: Can you be more -- can you be more  
6 specific as to what items you're talking about?

7 BY MR. SMITH:

8 Q. His physical copies of the Nazi paraphernalia that you  
9 have introduced into evidence were seized from Mr. Young's home  
10 in August 2016.

11 A. The physical copies, correct. Correct.

12 Q. So were those items a part of the case investigative file  
13 before Mr. Young was arrested?

14 A. Those specific items?

15 Q. Yes, the physical copies of the Nazi evidence that you  
16 have authenticated in this case.

17 MR. KROMBERG: Objection, Judge.

18 THE COURT: Go ahead.

19 MR. KROMBERG: The question is, could only lead to  
20 misleading answers. If the question is the things you seized  
21 after the arrest, were they part of the investigation before  
22 the arrest --

23 MR. SMITH: Your Honor, this is relevant because it  
24 is an appropriate line of inquiry whether any of the Nazi  
25 paraphernalia was a part of the investigation before Mr. Young

Caslen - Cross

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1 was indicted.

2 MR. KROMBERG: And the witness just said yes, that  
3 some of it was found in 2011.

4 THE COURT: You need -- focus your questions more  
5 appropriately. This is not a good question. I'll sustain the  
6 objection.

7 BY MR. SMITH:

8 Q. Agent Caslen, upon your review of the case file into the  
9 investigative history of Nicholas Young, was there ever any  
10 hate crime investigation into Mr. Young?

11 A. No.

12 Q. Were you prepared for your testimony today with the  
13 government attorneys?

14 A. Absolutely.

15 Q. Okay. And so when was the first time that you discussed  
16 the Nazi evidence with the prosecutor in this case?

17 A. Prior to the defendant's arrest, I believe we discussed  
18 the evidence that we knew about from 2011.

19 Q. You did. So when the agents seized the items, the  
20 physical items from Mr. Young's home in August 2016, did there  
21 come a time when they called the prosecutor and asked whether  
22 it would be appropriate to seize those Nazi items?

23 A. I was not at the defendant's residence during the search;  
24 I was on vacation; but I do believe they did call the  
25 prosecutor.

Caslen - Cross

1165

1 Q. And did they call the prosecutor about the *Inspire*  
2 magazines?

3 A. I do not recall.

4 Q. And why do you -- did there come a time when you learned  
5 why the investigators who seized the Nazi items were uncertain  
6 whether they should be seized?

7 MR. KROMBERG: Objection, Judge.

8 THE COURT: Sustained.

9 BY MR. SMITH:

10 Q. Now, you conducted two interviews on December 3, 2015, and  
11 December 5, 2015, with the defendant, correct?

12 A. Correct, myself and Agent Smith.

13 Q. Agent Smith.

14 Now, at the time you conducted these interviews with  
15 Mr. Young, you testified that there was a grand jury proceeding  
16 already pending into the defendant, correct?

17 A. I'm sorry, could you repeat the question?

18 Q. At the time you interviewed Mr. Young in December 2015, a  
19 grand jury proceeding was currently pending in connection with  
20 Mr. Young, correct?

21 A. Correct.

22 Q. During your interview with Mr. Young, two interviews in  
23 December 2015, did you inform him that there was a grand jury  
24 investigation into him?

25 A. No, that's not common. We wouldn't do that.

Caslen - Cross

1166

1 Q. Did he give any indication in the interview that he was  
2 aware of the grand jury investigation into him?

3 A. No.

4 Q. Was there a grand jury investigation into the informant Mo  
5 during -- at the time of your December 2015 interview?

6 A. No.

7 Q. Was there an FBI investigation?

8 A. No.

9 Q. Did there come a time when you learned during your review  
10 of the case file into the investigation into Nicholas Young  
11 that Mr. Young was aware of the grand jury investigation into  
12 him?

13 A. I'm sorry, could you repeat that question?

14 Q. In your review of the case file when you came onto the  
15 case, this investigation in October 2015, you reviewed the case  
16 file, correct?

17 A. Correct.

18 Q. And did you learn from your review of the case file that  
19 there was evidence to suggest that Mr. Young was aware of a  
20 grand jury investigation into him?

21 A. Not specifically a grand jury but there was evidence that  
22 led us to believe he assumed that we were investigating him.

23 Q. And what, what evidence was that?

24 A. His conversations with Khalil that Khalil had testified  
25 about.

Caslen - Cross

1167

1 Q. His conversations with Khalil in what year?

2 A. I don't recall the specific year.

3 Q. Well, do you recall Khalil's testimony that his meetings  
4 with Mr. Young were in 2010 and 2011 and discontinued in April  
5 2012?

6 A. Yes.

7 Q. And when was the first grand jury subpoena that you  
8 mentioned in this case?

9 A. So the grand jury subpoena list we put up was a sampling,  
10 and I believe it was in 2011. The one we listed was in 2011.  
11 The exact date of the first grand jury subpoena, I don't, I  
12 don't know that date.

13 Q. Will you be providing a complete list of the grand jury  
14 subpoenas?

15 A. I don't know. I believe so.

16 Q. Okay. So you mentioned that Mr. Young indicated he was  
17 aware of an investigation into him in his conversations with  
18 Khalil. Can you tell me what you're referring to?

19 A. Khalil's testimony where he testified that the defendant  
20 believed that the FBI was --

21 Q. -- listening to his communications, correct?

22 A. Yes.

23 Q. And so is that, is that the statement that you're saying  
24 is the indication that Mr. Young knew that there was an  
25 investigation into him?



Caslen - Cross

1168

1 A. That's an example of one, yes.

2 Q. Can you give me some other examples?

3 A. I mean, I believe that he mentioned to Khalil that he  
4 believed that him and Saleh Al-Barmawi were also being  
5 investigated. That would be another example.

6 Q. Did he say investigated, or did he say that he was being  
7 spied on?

8 A. I don't recall exactly how he said it.

9 Q. Okay.

10 A. But it led me to believe that he believed we were  
11 investigating him.

12 Q. Is it fair to say that that's the sum of the evidence  
13 you've reviewed in the case file, that Mr. Young was aware of  
14 an investigation into him?

15 A. There was also the time when he was looking for counter-  
16 surveillance outside of his house, when he believed we were  
17 outside of his house, with the weapon pointed out the window.

18 Q. You're referring to the occasion when he thought someone  
19 might be spying on him, right?

20 A. Correct.

21 Q. And is your position that that is the piece of evidence in  
22 the case file that indicates Mr. Young knew there was a  
23 criminal investigation opened into him?

24 A. That's, that's me saying that I -- it's my understanding  
25 that the defendant knew that. I'm not saying that that is

Caslen - Cross

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1 concrete that he absolutely knew we were.

2 Q. Oh, right. So is there a piece of evidence that does  
3 concretely indicate it upon your review of the case file?

4 A. I would say his arrest. That would be -- he may have  
5 become aware that we were investigating after his arrest.

6 Q. Which was on August 3, 2015, right?

7 A. '16.

8 Q. 2016.

9 I guess I'm asking you whether there's a piece of  
10 evidence -- so your interview with Mr. Young was on December 3,  
11 2015, and December 5, 2015?

12 A. Correct.

13 Q. So I guess I'm asking you about whether upon your review  
14 of the case file in this case, which goes back to September  
15 2010, Mr. Young -- you had any evidence indicating Mr. Young  
16 was aware of the investigation before December 3, 2015, or  
17 before December 5, 2015?

18 MR. KROMBERG: Objection, Judge. Asked and answered.  
19 The witness has already said he talked about Khalil's testimony  
20 and Khalil's reports from 2010, '11, and '12.

21 THE COURT: All right, both lawyers are making too  
22 much -- are including too much in their discussions and in  
23 their objections, but I'm going to sustain the objection  
24 because it's already been asked and answered.

25 BY MR. SMITH:

Caslen - Cross

1170

1 Q. Now, Khalil has testified -- you were here during Khalil's  
2 testimony, correct?

3 A. I was.

4 Q. Okay. Now, Khalil has testified that the last meeting he  
5 had with Nicholas Young was in April of 2012?

6 A. I don't recall exactly what day it was, but I believe it  
7 was --

8 Q. Early, early 2012?

9 A. It's fair to say.

10 Q. Okay. And is it fair to say that upon your review of the  
11 case file, that there were no other confidential informants who  
12 were tasked with reporting on Mr. Young between April 2012 and  
13 May 2014, when he met -- when Mo testifies that he meets the  
14 defendant?

15 MR. KROMBERG: Objection, Judge. It's irrelevant to  
16 whether there were confidential informants other than Khalil or  
17 anyone that's testified in the case.

18 THE COURT: I'm going to sustain the objection.

19 MR. SMITH: Your Honor, may I explain?

20 THE COURT: No. I'm sustaining the objection.

21 BY MR. SMITH:

22 Q. Okay. To the best of your knowledge, the first time  
23 that -- upon your review of the case file, the first time that  
24 the defendant encountered a confidential human source in the  
25 course of the investigation was May 2014, correct?

Caslen - Cross

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1 MR. KROMBERG: Objection, Judge. Again, the defense  
2 attorney is asking who the -- is leading to whether there were  
3 confidential informants and tipsters in the case that have not  
4 been brought up in this case, and that cannot be gone into.

5 THE COURT: We're going to sustain the objection.  
6 Move on to something else, Mr. Smith.

7 BY MR. SMITH:

8 Q. Agent Caslen, there was another individual who was  
9 referenced in connection with Mr. Young. His name was Saleh  
10 Al-Barmawi. A couple of witnesses have testified about that  
11 individual, Saleh Al-Barmawi, correct?

12 A. Correct.

13 Q. And his image was published on the screen?

14 A. It was.

15 Q. Has Saleh Al-Barmawi been indicted for terrorism charges?

16 A. He has not.

17 Q. Has he been arrested?

18 A. He has not.

19 MR. SMITH: Your Honor, one moment?

20 THE COURT: All right, counsel, this is taking too  
21 long. Let's go. Are there any other questions?

22 MR. SMITH: Your Honor, we are just formally  
23 objecting to the exclusion of the documents we attempted to  
24 cross-examine the witness with, and we will rest. We'll  
25 discontinue our line of questioning right now.

Caslen - Cross

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1 THE COURT: All right. Any --

2 MR. SMITH: Actually, sorry, sorry, Your Honor.

3 There is one more line of cross, and we have some stipulated  
4 documents that we'd like to publish to the jury. So can we  
5 start with Defense Exhibit 14?

6 MR. KROMBERG: Can we see what it is that we're  
7 stipulating to?

8 MR. SMITH: The government's seen them already, but  
9 we can show them again.

10 MR. KROMBERG: It would be helpful when I know what  
11 the exhibits are.

12 No objection, Judge.

13 THE COURT: All right, what are the numbers for  
14 these?

15 MR. SMITH: It's 14, 15, 16, 17, 18, 19, 20, 21, 22,  
16 23, 24.

17 THE COURT: 14 through 24.

18 MR. SMITH: 14 through 24.

19 THE COURT: All right, that's fine. They're in.

20 (Defendant's Exhibit Nos. 14 through 24 were received  
21 in evidence.)

22 THE COURT: Do you want them shown to the witness?

23 MR. SMITH: We can publish them, Your Honor, but  
24 let's just start with 14.

25 Q. So, Agent Caslen, you were not at the, the search of

Caslen - Cross

1173

1 Mr. Young's home in August 2013, correct?

2 A. I was not.

3 Q. But you've mentioned earlier in your testimony that there  
4 came a time when you had conversations with the searching  
5 agents about the search of Mr. Young's home, correct?

6 A. That's correct.

7 Q. And you've testified earlier that one of the agents had a  
8 question about whether the Nazi material should be seized, and  
9 they called the prosecutor, correct?

10 A. I'm sorry, could you repeat that one?

11 Q. You testified that you had a conversation with one of the  
12 searching agents who searched Mr. Young's home on -- in August  
13 2013?

14 A. Correct.

15 Q. 2016.

16 And they indicated that they had a question about  
17 whether to seize the Nazi materials, and they called the  
18 prosecutor in the case, correct?

19 A. They called the prosecutor about the Nazi materials, to  
20 whether -- the nature of the call, I'm unaware.

21 Q. All right. So in your conversation with that agent who  
22 called the prosecutor about the Nazi materials, did the agent  
23 indicate whether there were other military objects in the home  
24 separate from Nazi materials and white supremacism memorabilia?

25 A. So I've seen these exhibits, and I have gone through --

Caslen - Cross

1174

1 I've talked to that agent, and I've also gone through some of  
2 the photographs we took at the defendant's residence to try and  
3 ensure that some of these items were actually there, and some  
4 of them were.

5 Q. Okay. So would you agree that Defense Exhibit No. 14 is  
6 sort of -- this is not how it appeared. This does not purport  
7 to be -- this is not how the agent described the scene of the  
8 arrest to you in August 2016, correct?

9 A. That's correct.

10 Q. And so would you say that these items are collectively  
11 representing some military objects in Mr. Young's home that  
12 were assembled after the search of Mr. Young's home in August  
13 2016?

14 A. I would, I would not say that because in my review of the  
15 photographs as well as talking to some of the agents who were  
16 there, they did not see all of this. However, I did see some  
17 of the items in the defendant's residence. So I would not  
18 characterize it as that these represent items that were in the  
19 defendant's residence, but some of them were.

20 Q. Okay. So, for example, like, Defense Exhibit 15, they  
21 describe, you know, Japanese artifacts, Japanese historical  
22 artifacts?

23 A. I recall seeing something similar to this in defendant's  
24 vehicle.

25 Q. Okay.

Caslen - Cross

1175

1 A. Not so much in the photographs from the defendant's  
2 residence.

3 Q. Okay.

4 A. As well as a photograph of a kamikaze pilot on the  
5 defendant's Facebook page that had something similar.

6 Q. Okay. How about 16?

7 A. These are -- they're out of order, so --

8 Q. There's a, there's a stamp on the bottom of 16. And it's  
9 published on the screen right next to you.

10 A. Oh, I'm sorry.

11 Q. So is this an item that you would -- would you say it's  
12 fair to say that the agent who searched the home found a wide  
13 range of historical memorabilia?

14 A. Again, in my discussion with the agent as well as  
15 personally going through the photographs, I did not see as wide  
16 a variety as that's in these photographs, so I would not say  
17 that that's correct.

18 Q. How about 17? These are airborne jump boots?

19 A. I did not see that in the photographs as well, and I did  
20 not hear that the -- from the agents that were there that they  
21 were there, but not out of the realm of possibility to have  
22 been there given the amount of shoes that were in the --

23 Q. How about 18?

24 A. Same as my last, the last photograph. This was not seen  
25 in any of the photographs, but there was a bookshelf, and there



Caslen - Cross

1176

1 were a lot of books in the residence.

2 Q. There were a lot of books in the residence?

3 A. Yes.

4 Q. What kind of books?

5 A. Well, there were some Nazi books.

6 Q. Right. Well, we've seen those.

7 MR. KROMBERG: Objection, Judge. When the defense --  
8 I think we have to approach.

9 THE COURT: No. Overruled.

10 MR. KROMBERG: Well, then it's misstating the  
11 evidence because we haven't seen the books. We've seen the  
12 cover of one book.

13 MR. SMITH: I'm asking the witness a question.

14 THE COURT: The witness just said he saw Nazi books.  
15 That's the only answer that was made to the question, all  
16 right?

17 MR. SMITH: That was for some of the books he saw,  
18 but I guess I'm eliciting whether that was all of the books.

19 THE COURT: And you saw other books as well; is that  
20 right?

21 THE WITNESS: In the photographs, Your Honor, there's  
22 other books as well on the bookshelves.

23 THE COURT: That's fine, all right.

24 BY MR. SMITH:

25 Q. Okay. So let's go to No. 19. Do you see that?

Caslen - Cross

1177

1 A. I see the exhibit.

2 Q. You don't recall learning that that book was also there?

3 A. I do not.

4 Q. Okay. How about 20?

5 A. Same. I do not recall seeing that in any photographs  
6 or --

7 Q. Do you recognize -- so if you look at No. 20, do you, do  
8 you recognize the figure on that book?

9 A. I do not.

10 Q. You don't?

11 THE COURT: All right, we're not getting into --

12 MR. SMITH: Well, no, Your Honor. This is a  
13 predisposition issue.

14 Q. Are you familiar with Libertarian politics?

15 A. I am not.

16 Q. Are you familiar with conservative politics?

17 MR. KROMBERG: Objection. Irrelevant.

18 THE COURT: Sustained. Sustained.

19 MR. SMITH: Can you go to 21, please?

20 Q. Did you find a series of Bibles in his home?

21 A. Again, I was not present during the search, but again, in  
22 my search of the photographs that were taken, I did not see a  
23 photograph of the Bible.

24 Q. All right. Four Bibles?

25 A. Of any Bible.

Caslen - Cross

1178

1 MR. SMITH: Okay. Can you go to No. 22?

2 Q. Do you have any reason to believe that there was a --  
3 there wasn't a wide range of history books like this at the  
4 home?

5 A. I do not recognize that book as being in the residence via  
6 the photographs that I reviewed.

7 Q. How about Exhibit 23?

8 A. Same with this one.

9 Q. 24?

10 So I guess the point here is, Agent Caslen, you have  
11 no reason to believe that there wasn't a wide array of books in  
12 the home that was not Nazi related, correct?

13 A. I'm sorry, could you repeat that?

14 Q. You have no reason to believe after your review of the  
15 case file and speaking with the searching agents of Mr. Young's  
16 home that there was not a wide range of books in the home?

17 A. I did not see a wide-ranging view of these books in any of  
18 the photographs that were taken at the residence.

19 Q. You don't dispute these were, these were found in the  
20 residence, right?

21 A. I do dispute it because I did not -- I was not there, so  
22 I'm not, I'm not comfortable in saying that they were in the  
23 residence.

24 MR. SMITH: Your Honor, we have a stipulation from  
25 the government that these documents -- these items were found

Caslen - Redirect

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1 in Mr. Young's home at the time of the search of Mr. Young's  
2 home.

3 THE COURT: The government didn't object.

4 MR. KROMBERG: We don't oppose it, but I think the  
5 problem is that Special Agent Caslen doesn't have any --

6 THE COURT: Right.

7 MR. KROMBERG: He's not in on stipulations that the  
8 prosecutors made.

9 THE COURT: All right. So these exhibits are  
10 pictures of items that were found in the home, all right.

11 MR. KROMBERG: Right.

12 MR. SMITH: That's it, Your Honor.

13 THE COURT: All right. Any redirect?

14 MR. KROMBERG: Very briefly, Judge.

15 REDIRECT EXAMINATION

16 BY MR. KROMBERG:

17 Q. Special Agent Caslen, based on your review of the pictures  
18 of the search, location, and your conversations with the agents  
19 that were there, what framed portraits of political leaders of  
20 the 20th Century were found in the home?

21 A. Only that of Adolf Hitler.

22 Q. What uniforms --

23 MR. SMITH: Objection. 403, and we move for a  
24 mistrial again.

25 THE COURT: No, I think you got into the whole issue

1 about what was found in the home, and I've overruled the  
2 objection. Thank you.

3 MR. KROMBERG: All right, we have nothing further.  
4 Thank you, Judge.

5 THE COURT: All right. Agent, you may step down.  
6 (Witness excused.)

7 THE COURT: All right, any further evidence from the  
8 United States?

9 MR. KROMBERG: No, but as I said, we do ask for leave  
10 to go over the exhibit lists with the clerk and make sure that  
11 we have properly moved in the things we ought to move in.

12 THE COURT: All right.

13 MR. KROMBERG: But otherwise, we are done. We close.

14 THE COURT: And we still have an issue about 10-600,  
15 the summary?

16 MR. KROMBERG: Oh, I'm sorry, yes.

17 THE COURT: We'll discuss that outside the presence  
18 of the jury. All right. All right --

19 MR. KROMBERG: And, Judge, by the way, that's 16- --

20 THE COURT: Is it 16-whatever?

21 MR. KROMBERG: 002.

22 THE COURT: That's it, yeah.

23 All right, do you-all need to approach the bench?

24 (Bench conference on the record.)

25 THE COURT: Who's making the motion?

1 MR. SMITH: Which motion?

2 THE COURT: Do you want to make a Rule 29 motion?

3 MR. SMITH: We would like the time to draft a motion.

4 THE COURT: No, we make it right now at the bench.

5 MR. SMITH: Oh, the Rule 29 motion? We would --

6 THE COURT: Are you moving for judgment as a matter  
7 of law at this point?

8 MR. SMITH: Only on the obstruction counts, Your  
9 Honor, but we would like an opportunity --

10 THE COURT: The obstruction counts were more than  
11 adequately made because the government now got into evidence  
12 that there was, in fact, a grand jury investigation going on,  
13 and one can draw from the evidence in this case reasonable  
14 inferences in favor of the government that the defendant knew  
15 or had reason to believe that there would be an active  
16 investigation against him. So I'm overruling the objection.

17 Now, on Count 1, you're not making a motion?

18 MR. SMITH: Yes, we're making a formal motion.

19 THE COURT: And again, there's more than enough  
20 evidence at this point, drawing all inferences in favor of the  
21 government, the plaintiff -- sorry, that the defendant  
22 attempted to provide material support to a designated foreign  
23 terrorist organization.

24 So let's get on with your case. Thank you.

25 MR. SMITH: Your Honor, there's a couple more items,

1 if we could address with the Court?

2 We would like to --

3 THE COURT: Wait a minute. All right, go ahead.

4 MR. SMITH: Evan Turgeon raised several questions  
5 about the description of the charges in this case, and he's --  
6 we'd like --

7 THE COURT: We're at the point now where we want your  
8 case in, all right? We need to get the evidence to the jury.

9 MS. MORENO: Your Honor, we are going to rest.

10 THE COURT: You're going to rest?

11 MS. MORENO: We're going to rest.

12 THE COURT: Right now?

13 MS. MORENO: Yes.

14 THE COURT: I need to have the defendant -- I need to  
15 make sure.

16 MS. MORENO: Of course. I understand.

17 THE COURT: I'm going to excuse the jury for lunch at  
18 this point, all right?

19 MR. SMITH: And what is the next step, Your Honor?

20 THE COURT: I'm sorry?

21 MR. SMITH: And what's the next step if the defense  
22 rests?

23 THE COURT: If the defense rests, the case is over.

24 MR. SMITH: Right.

25 THE COURT: The next step will be that we will do the

1 final charging conference.

2 MS. MORENO: We also have an issue on the verdict  
3 form.

4 THE COURT: That's fine. We'll discuss the verdict  
5 form. We'll have our charging conference, and I guess we're  
6 going to get the case to the jury this afternoon.

7 MR. SMITH: Your Honor, we would request until  
8 Monday. There are several things we have to -- we need to --

9 THE COURT: Oh, no, no. When we finish this early,  
10 we're five hours ahead of schedule, I'm not going to waste the  
11 time to get the case to the jury this afternoon. That's  
12 wonderful. There's no reason not to.

13 MR. SMITH: Your Honor, we want to review the  
14 evidence submitted in this case more than two hours before --  
15 one agent just finished testifying.

16 THE COURT: I don't know where you practice,  
17 Mr. Smith; we don't work that way in this court. We don't  
18 waste the jury's -- waste civilians' time on something like  
19 that.

20 No, I'm going to let the jury go to lunch. We'll do  
21 our charging conference. I don't think I've yet seen the  
22 verdict form, so I'm going to give everybody a 15-minute break  
23 so you can think about the verdict form, and we'll talk.

24 MR. KROMBERG: And we also have one additional  
25 instruction that we wanted to propose.



1 THE COURT: We'll have to have a charging conference.  
2 We need to look at this proposed verdict form.

3 Do you have the verdict form?

4 THE LAW CLERK: No.

5 THE COURT: You need to get a verdict form. Do you  
6 have an alternate verdict form you want to discuss?

7 MS. MORENO: We have no objection to your verdict  
8 form. They've changed it.

9 THE COURT: All right. Okay. All right. So we're  
10 going to let the jury go. I'm going to give them longer than  
11 normal for lunch because I want to make sure we don't have a  
12 problem. We have to get all this exhibit stuff in, too. So  
13 I'm going to give them until 1:30, all right?

14 MR. KROMBERG: Thank you, Judge.

15 (End of bench conference.)

16 THE COURT: All right, ladies and gentlemen, we  
17 actually are so far ahead of schedule that all the evidence is  
18 in. So what I'm going to do now, because it takes us a while  
19 to get the exhibits organized and to have the instructions put  
20 together in a format that will be of assistance to you, I'm  
21 going to give you actually until 1:30 for lunch.

22 And you don't have to stay in the building, although  
23 it's not terribly nice out there. It's cold, but I don't think  
24 it's snowing yet.

25 But in any case, when you come back at 1:30, what we

1 will have are the closing arguments, and I will give you the  
2 instructions. Whether there's enough time for you to get  
3 started deliberating tonight, because I had said that we would  
4 stop at five, although, frankly, if the whole jury wants to  
5 stay later than five, we'll just keep the heat on, and we can  
6 let you do that as well, but in any case, do not begin making  
7 up your minds about any issue because you have not heard the  
8 closing arguments, and you have not gotten the instructions  
9 from the Court.

10 But we would like you back here at 1:30. Thank you.  
11 We're going to stay in session.

12 (Jury out.)

13 THE COURT: All right, so the first order of business  
14 is, number one, Mr. Kromberg, if you have an additional  
15 instruction you want the Court to be considering, was a copy  
16 given to the defense?

17 MR. KROMBERG: May I pass this matter for Mr. Turgeon  
18 to speak about?

19 THE COURT: If you'd hand it up to us, please? Do  
20 you have one for the Court?

21 MR. TURGEON: Yes, Your Honor. This is Government's  
22 Proposed Jury Instruction No. 57. We've provided a copy to  
23 defense counsel.

24 THE COURT: All right, I want one for my law clerk,  
25 too, if you have an extra one.

1 MR. TURGEON: Excuse me, Your Honor?

2 THE CLERK: Do you have some for my court reporter  
3 and for my law clerk?

4 MR. TURGEON: Yes, absolutely.

5 And this is a jury instruction with regard to venue,  
6 Your Honor, with the citations at the bottom.

7 MR. SMITH: Your Honor, we would just note we  
8 received this instruction this morning. We have had no  
9 opportunity to conduct any research, and we object.

10 THE COURT: I don't even know if I need this  
11 instruction. Do I really? We've established that the grand  
12 jury was convened in the Eastern District of Virginia. Again,  
13 there's no dispute about venue.

14 MR. TURGEON: Your Honor, okay. That's okay.

15 THE COURT: Is there a dispute about venue?

16 MR. SMITH: There actually is a dispute about venue,  
17 Your Honor.

18 THE COURT: Well, all right, at the lectern. Let me  
19 hear what the dispute is.

20 MR. SMITH: Your Honor, if Your Honor has a copy of  
21 the indictment, you can see that Count 4 concerns a text  
22 message that was sent from one location to -- from Mr. Young's  
23 phone to the phone owned by the informant Mo.

24 I'm not sure why the government has decided to  
25 produce this instruction for venue. We simply had a

1 conversation with the government outside the courtroom that,  
2 inquiring whether the government had evidence indicating the  
3 text was sent from Virginia, as opposed to Washington, D.C.,  
4 where Mr. Young is employed -- was employed.

5           So I assume that's what's prompting this venue  
6 instruction, but I'm just noting for the record that we  
7 received this draft instruction just now. We've had no  
8 opportunity to research this issue. We would like an  
9 opportunity because we think it could be a significant issue.

10           And, Your Honor, while we're on the subject of venue,  
11 there's been some testimony in this case from Agent Sikorski  
12 that he may have received the gift cards at issue in this  
13 case -- Agent Sikorski was the agent who was in control of the  
14 alias Mo's e-mail account in about July 2016, and there is some  
15 testimony from Agent Sikorski that he wasn't sure whether he  
16 received -- it was actually his, his phone that he was  
17 e-mailing the defendant with.

18           He has -- I think he has a residence in Virginia and  
19 D.C., or he's working in D.C. and has a residence, so he didn't  
20 recall whether he received the text message in Washington,  
21 D.C., or Virginia, the Google Play message, but we do know and  
22 can establish that Mr. Young -- the phone from which the gift  
23 cards were sent was in Washington, D.C., in L'Enfant Plaza,  
24 when the gift cards were sent.

25           Now, if Your Honor looks at the venue provisions,

1 there could be an issue here. That is Count 1, so we are not  
2 sure why Count 2 and Count 4 -- now, just to be completely  
3 frank, Mr. Gibbs stood up during Agent Sikorski's testimony and  
4 said, "Well, isn't it true that the gift cards were purchased  
5 at a Best Buy in Virginia?"

6 We haven't had the opportunity to look at these  
7 nuances yet, but there could be an issue with Counts 1 and 4.

8 THE COURT: Well, we don't play -- we're not going to  
9 take the jury's time up while everybody runs around and tries  
10 to put the case together. The case has moved faster than  
11 expected, and everybody who practices in this court knows  
12 that's how we proceed. As I said, it's 12:10, and we have  
13 plenty of time left in the day to get this case to the jury.  
14 I'll give you, you know, you've got a bit longer lunch period  
15 if you can find something on this.

16 I will look at the Instruction 57 and look at the  
17 source the government has provided for it. Normally, venue  
18 does not become an issue, it does in some cases, but the grand  
19 jury was impaneled and was working in the Eastern District of  
20 Virginia, and my experience with these types of offenses is if  
21 the obstruction was intended to affect a proceeding in a  
22 particular venue, that is sufficient basis for venue. I think  
23 that's solid law.

24 There could also be venue in other jurisdictions as  
25 well. You know, in federal cases, there could be multiple

1 venues, but as long -- and the government did establish that.  
2 I was listening for it because at one point, I thought 2 and 4  
3 might go, but they've got that evidence in the record now.

4 So I think I see no problem with this, and frankly, I  
5 mean, I will give the instruction if the defense feels that  
6 it's going to be an issue, but I wasn't planning to put a venue  
7 instruction in the case.

8 MR. SMITH: Thank you, Your Honor. There's one more  
9 housekeeping issue that --

10 THE COURT: Yeah.

11 MR. SMITH: Evan Turgeon raised a supplementary  
12 verdict form in the hearing before --

13 THE COURT: I still don't have a copy. Somebody give  
14 me a copy of it so I can see what we're talking about.

15 MR. SMITH: I'll let him speak first.

16 MR. TURGEON: Yes. Your Honor, as I mentioned a  
17 moment ago, the government presented evidence on two theories  
18 of guilt for Count 1, the first line, preventing material  
19 support by lying to the FBI to conceal the whereabouts of Mo,  
20 and second, sending gift cards to Mo, preventing material  
21 support in that way, and it's the government's position that  
22 there's evidence in the record sufficient for the jury to find  
23 guilt, that the defendant was guilty under either theory on  
24 Count 1, but as the verdict form currently stands, if the  
25 defendant is convicted, we won't know whether the jury found

1 him guilty under one theory or the other theory or both.

2 And the special verdict form that I just handed up  
3 essentially asks the jury to tell us that, tell us what they  
4 found, and there are certainly, as the Court can imagine,  
5 potential benefits down the road to that.

6 THE COURT: It usually helps both sides. It helps  
7 the defense, too. If the case does go to appeal, they have a  
8 clearer picture as to how the jury saw the case.

9 MR. SMITH: Your Honor, if I may?

10 THE COURT: Yes, Mr. Smith.

11 MR. SMITH: Thank you, Your Honor. So if Your Honor  
12 sees in the verdict form -- in the new verdict form that  
13 Mr. Evan Turgeon is referencing, the first, the first comment  
14 here is as to Count 1, attempting to provide material support  
15 to a foreign terrorist organization by attempting to provide  
16 misleading information.

17 Now, if Your Honor looks at Count 1 in the  
18 indictment, you'll see that it's a charge under 18 U.S.C.  
19 2339(b), 2339(b), but the theory of liability here is providing  
20 misleading information.

21 Your Honor, we think at some point, the government  
22 may have realized or will soon realize they used the wrong  
23 statute to charge a misleading -- a deception, a concealment  
24 crime concerning terrorism. The correct statute is 18 U.S.C.  
25 2339(a), and, Your Honor, we would just -- we can put this

1 orally on the record, we'd also like to brief this, but there's  
2 a couple of moving parts here.

3 THE COURT: The cleaner way of doing this is just to  
4 do the second paragraph as to Count 1 because this case is a  
5 gift card case.

6 MR. SMITH: Exactly.

7 THE COURT: That's cleaner and simpler, and if this  
8 jury doesn't find on that, they're not going to find on the  
9 other. You've got the others covered in Counts 2 and 4, but I  
10 think this unnecessarily complicates the jury's analysis of  
11 this case, and I don't see any reason why it benefits anybody  
12 in making it more complicated than is necessary.

13 MR. SMITH: Thank you.

14 THE COURT: So my intention is actually to use a  
15 revised verdict form, but it would only be the last three  
16 counts there.

17 MR. SMITH: Why would it be revised, Your Honor, if  
18 it's just the last -- I think that's what --

19 THE COURT: We'd get rid of the first paragraph  
20 entirely because we're not talking about the providing.

21 MR. SMITH: Then I think the next three are just what  
22 Your Honor proposed originally.

23 THE COURT: It's even cleaner this way because it  
24 tells you specifically it's the gift cards.

25 MR. SMITH: I see.



1 THE COURT: And it doesn't open up the door for it  
2 becoming mucky about the other aspect of it, all right?

3 MR. TURGEON: Your Honor, if I may, it's the  
4 government's position, and I think the evidence bears this out,  
5 that there can be no entrapment as to the first theory of  
6 liability here. That is legally sufficient. The evidence is  
7 legally sufficient under that theory to prove the defendant  
8 guilty, but there has been no evidence of inducement, that the  
9 defendant was induced in any way to lie to the FBI because the  
10 government didn't ask him to lie. No one asked him to lie.

11 THE COURT: Then you'll get him on Counts 2 and 4,  
12 but Count 1 is a cleaner, easier count for the jury to  
13 understand on the gift card issue, and I think that's a better  
14 way of doing it. In other words, my original -- the original  
15 instruction was just the general is he guilty of Count 1, all  
16 right?

17 MR. TURGEON: Yes, Your Honor. As long as the  
18 Court --

19 THE COURT: But the way you've parsed it makes me  
20 think since you're worried about the first element, that it's  
21 even easier and even more specific to say this is the  
22 government's real theory of the case. The essence of Count 1  
23 is the providing the gift cards or gift card codes to Mo, and  
24 Counts 2 and 4 have to do with the misleading of the FBI.

25 MR. TURGEON: Misleading is certainly essential to

1 Counts 2 and 4; however, the misleading is also part of Count  
2 1, Your Honor.

3 THE COURT: Well, I'm going to make this simple. I'm  
4 going with my instinct on this one. So I'm going to take the  
5 verdict form you've proposed, I'm striking the first paragraph.  
6 So it's going to just be -- and we'll give it to you again, but  
7 that's how it's going to go. Okay?

8 MR. TURGEON: Thank you.

9 THE COURT: All right. Let me give you a ten-minute  
10 break so I can pull together the instructions, because we are a  
11 little bit ahead of ourselves on this, and tell you exactly  
12 what you're going to get. We had a pretty good, I thought,  
13 charging conference before the case even got started, and I  
14 want to just go through it with you one more time so you know  
15 what's in and what's out, all right? So we'll be back in ten  
16 minutes.

17 (Recess from 12:20 p.m., until 12:48 p.m.)

18 (Defendant present, Jury out.)

19 THE COURT: All right. Now, before we get started on  
20 the other matters, I need to put this on the record.  
21 Mr. Young, go up to the lectern, please.

22 Mr. Young, I just want to make sure that you had  
23 enough time to discuss with your counsel your options of  
24 testifying as a witness in the case or of not testifying. Have  
25 you had enough time to discuss that decision?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: All right. Because I do know that from  
3 prior press releases, you indicated you wanted to testify.  
4 It's your absolute right to testify in the trial as a witness.  
5 Do you understand that?

6 THE DEFENDANT: Understood, Your Honor.

7 THE COURT: All right. Now, I assume you have made  
8 the decision not to testify; is that correct?

9 THE DEFENDANT: That's correct, Your Honor.

10 THE COURT: And have you made that decision after  
11 consulting with counsel?

12 THE DEFENDANT: That's correct.

13 THE COURT: And are you making that of your own free  
14 will? In other words, are you comfortable making that  
15 decision?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. Because I need to make sure  
18 that that is a voluntary and knowing waiver of the right to  
19 testify.

20 And you're satisfied that you've had enough time to  
21 make this consideration?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: All right, that's fine. You may have a  
24 seat.

25 All right. Now, the next thing we have to do to get

1 this case ready to go to the jury is to make sure that all of  
2 the exhibits are in, so what I normally have is my very, very  
3 good courtroom deputy is going to read to you what her records  
4 show are the exhibits that have been entered into evidence, and  
5 before we do that, I had said yesterday -- again, I may  
6 misremember what was said yesterday, but I thought the time  
7 estimate that I had gotten from counsel -- and I would never  
8 fault anybody for moving faster than expected, but I thought  
9 the anticipation was that the evidence would go throughout most  
10 of today, and that's why we said we would then probably finish  
11 the case up on Monday.

12           Again, I'm not going to waste the jury's time. Since  
13 they're here, we're going to get this case to them today, but  
14 that may have put both sides at a little bit of a surprise,  
15 although I suspect the defense kind of knew they would have  
16 time today.

17           Does the government have its exhibit list ready for  
18 the jury? In other words, I had said I wanted an index. The  
19 defense doesn't have very many, so that's not a problem, I  
20 think, for the defense.

21           MR. TURGEON: Your Honor, I have prepared a list that  
22 will be ready for the jury, but we need maybe half an hour to  
23 get that in final shape.

24           THE COURT: The jury may not be able to start at  
25 1:30. You-all need to get lunch and a little bit of extra time

1 to prepare, but anyway, all right, I'm aware of that. Let's  
2 keep moving then.

3 So Ms. Guyton is now going to read her list of what  
4 she believes are the exhibits that have been entered into  
5 evidence, and the government needs to let us know and the  
6 defense need to let us know if, number one, there are any  
7 exhibits the government feels they thought should be in but are  
8 not in, and then, obviously, if the defense feels that there  
9 are exhibits that we're recording as being in that they think  
10 were not formally admitted.

11 This is not the time to renew objections. It's just  
12 a time to reflect what the record should be showing, all right?

13 THE CLERK: Exhibit No. 1-100 to 1-107, 108, 109  
14 through 1-115. So 1-100 to 1-115.

15 MS. MORENO: Excuse me, I'm so sorry to interrupt.  
16 These are all in?

17 THE COURT: These are in, yes.

18 THE CLERK: 1-116, 1-200 to 1-222, also 1-210A, 1-300  
19 to 301, 302, 303, 304, 305, 306, 307, 308, 1-401, 402, 403,  
20 404, 405, 406, 407, 408, 410, 600, 701, 702.

21 THE COURT: Wait, wait. Slow down. That's 1-600,  
22 correct?

23 THE CLERK: Yes. And then 2-101, 102, 103, 2-104,  
24 105, 106, 107, 108, 109, 110, 111, 112, 2-116, 2-118, 119, 120,  
25 121, 122, 123, 2-125, 126, 127, 128, 129, 130.

1                   3-101, 102, 103, 104, 105, 3-108, 109, 110, 3-115,  
2 117, 117A, 118, 118-A, 119, 119-A, 120, 120-A, 3-125. I  
3 skipped 3-121. 3-100 also I skipped.

4                   3-200, 3-202, 203, 204, 205, 206, 207, 208, 3-209,  
5 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221,  
6 222, 223, 224, 225, 226, 3-300, 302.

7                   4-101, 102, 104, 105, 106, 107, 108, 109, 4-200,  
8 4-203, 4-300.

9                   5-101-1, 101-1T, 101-2, 101-2T, 101-3, 101-3T, 101-4,  
10 101-4T, 101-5, 101-5T, 101-6, 101-6T, 101-7, 101-7T, 5-102,  
11 102-T, 5-301-1, 301-2, 301-3, 301T1, 301T2, 301T3.

12                   6-101-2, 601-2T, 6-102-2, 6-102-2T, 6-103-2,  
13 6-103-2T, 6-103-3, 103-3T, 6-103-5, 6-103-5T, 6-103-6, 103-6T.  
14 103-7, 103-7T, 6-104-2, 104-2T, 104-3, 104-3T, 6-105-1, 105-1T,  
15 6-106-4, 106-4T, 6-107-1, 107-1T, 6-108-1, 108-1T, 108-2,  
16 108-2T, 6-109 -4, 109-4T, 109-5, 109-5T, 109-6, 109-6T,  
17 6-110-1, 110-1T, 6-201, 202, 203.

18                   7-101, 101-1, 101-2, 101-3, 7-102, 7-201A, 7-201C,  
19 7-202A, 7-204A, 205A, 205B, 7-207A, 207B, 7-209A, 209B, 7-211A,  
20 211B, 211C, 7-212-A, 212B, 7-213A, 213B, 214A, 7-216A.

21                   8-101, 102, 103, 104, 8-106, 8-107, 8-108, 8-109,  
22 8-112, 113, 114, 115, 8-500.

23                   9-101, 102, 103, 104, 105, 106, 107, 108.

24                   10-000, 10-100, 10-101A, 10-103, 10-203, 10-204,  
25 10-205, 10-208. 10-220, page 1 and 2 only. 10-230, 10-231,

1 10-232, 10-236, 10-237, 10-238, 10-240, and I also have  
2 10-202T. 10-241, 10-252, 10-303, 10-304, 10-305, 10-305T,  
3 10-620, 10-650, 10-700. 10-701, cover only. 10-706, redacted.  
4 10-7- --

5 THE COURT: Hold on a second. With 706, has that  
6 redaction been done so that that's in the original report  
7 that's going to go to the jury?

8 MR. KROMBERG: Judge, should it be redacted to go to  
9 the jury or only in the public -- in the copy that is filed  
10 with the Court?

11 THE COURT: Can you pull 706 for me? I want to see  
12 what the --

13 THE COURT SECURITY OFFICER: 7?

14 THE COURT: 706 -- I'm sorry, 10-706.

15 MR. KROMBERG: The ones that we have filed publicly  
16 have been redacted, but the ones that Your Honor examined in  
17 court at the motions hearing was unredacted.

18 THE COURT: These are the ones going to the jury.

19 Now, I thought we decided with 706, this is the list  
20 of the Panzer grenade? The only thing that's relevant on this  
21 exhibit is the Düsseldorf name. Otherwise, it has the names of  
22 other people, with their home phone numbers and their  
23 addresses, which I don't think is proper to go to the jury.

24 So unless there's an objection from the defense, my  
25 position would be to not even give page 2 because that doesn't

1 have anything with the plaintiff. With page 1, we can white  
2 all out except for it's the fourth paragraph on the first  
3 column.

4 Is there any objection from the defense to do it that  
5 way?

6 MS. MORENO: No objection.

7 MR. KROMBERG: And also not white-out the top, the  
8 heading.

9 THE COURT: The heading would be there and the  
10 filigree around the side, but I don't want these other people's  
11 names and addresses going out, all right? We'll show it to  
12 defense counsel before it's done. I'm going to give this to my  
13 courtroom deputy now to hold on to, but we will be redacting  
14 then 706. That's what will go to the jury, and that's what  
15 will be in the official court file should anybody ever look at  
16 it, all right, because the evidence now does become available.  
17 All right.

18 THE CLERK: Next would be 10-714; 10-715, page 2  
19 only; 10-806; 10-807; 10-810; 10-814; 10-818; 10-821; 10-822;  
20 823; 824; 825; 826; 827; 10-850; 10-860; 10-861; 10-863;  
21 10-903.

22 11-220, 11-400, 11-401, 11-600. I also have 11-202A.

23 12-001, 002, 003, 004, 005, 006, 007, 008, 009, 010,  
24 011, 012, 013, 014, 015, 018, 019, 020, 021, 022, 027, 028,  
25 029, 031, 032, 033, 034, 035, 036, 037, 038, 039, 040, 041,



1 042.

2 13-101, 13-102, 13-103, 13-104, 13-105.

3 14-100, 14-101, 14-102, 14-103, 14-104, 14-105,

4 14-119, 14-140, 14-141, 14-180.

5 15-201. 16-000, revised version. 16-001, 16-101,

6 16-102, 16-103, 16-105, 16-106, 16-401, 16-402, and 18-100.

7 THE COURT: I didn't hear the last one. One zero --

8 THE CLERK: I'm sorry?

9 THE COURT: What's the 18?

10 THE CLERK: 100.

11 THE COURT: Okay. And then just for the record, the  
12 defense exhibits that are in evidence, let's read those.

13 THE CLERK: Defense exhibits are 2, 3, 4, 5, 6, 7, 8,  
14 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24.

15 MR. SMITH: Your Honor?

16 THE COURT: Yes.

17 MR. SMITH: A couple of days ago, Your Honor  
18 requested that we clean up the recordings we attempted to play  
19 for the jury and then put them on one disc in a clip format, so  
20 what we have done, we've notified the government of this a  
21 couple days ago, is we've created Defense Exhibit 1, which is a  
22 DVD with files from the recordings we attempted to play during  
23 the testimony of the CHS Mo.

24 The dates of those recordings are May 31, 2014;  
25 August 10, 2014; September 11, 2014; October 10, 2014; October

1 16, 2014; October 17, 2014; and October 24, 2014.

2 Now, that sounds like a lot of dates, but actually,  
3 the number of clips from each day is very limited, so I would  
4 estimate that the total number of recorded minutes for the sum  
5 of those days is probably on the order of 10 to 15 minutes.

6 THE COURT: Those are the ones that were played in  
7 court?

8 MR. SMITH: Correct.

9 THE COURT: All right. Is the government satisfied  
10 with that?

11 MR. KROMBERG: Yes, Your Honor.

12 THE COURT: All right, that's fine. So Defense  
13 Exhibit 1 is in evidence.

14 (Defendant's Exhibit No. 1 was received in evidence.)

15 THE COURT: All right, so we'll need to hand that to  
16 the court security officer.

17 Yes, Mr. Kromberg?

18 MR. KROMBERG: Judge, our list is 99.9 percent the  
19 same, but we have 7-201B, as in --

20 THE COURT: All right, hold on. You have 7-201B, as  
21 in boy?

22 MR. KROMBERG: Correct, and 7-201D, as in David.

23 THE COURT: Let me take a look at them. Which  
24 witness would have put those in?

25 MR. KROMBERG: That would have been Mr. Siegfried.

1 This was FedEx still photos.

2 I'm sorry, Judge, Agent Caslen advised me that might  
3 have been during Mo's testimony, but this is the still photos  
4 of the 10 -- October 25 --

5 THE COURT: Wait, I'm sorry, 7-20 what?

6 MR. KROMBERG: 201B, as in boy, and D, as in David.

7 THE COURT: Well, in Siegfried's testimony, I had  
8 202A through 216A going in.

9 MR. KROMBERG: Yes. And --

10 THE COURT: Well, he may also have them in. I  
11 definitely have a marking that with Siegfried, they were  
12 already in. And I have Exhibits -- and my courtroom deputy is  
13 correct -- also with Mo, I have 7-201A and I have 7-201C going  
14 in with Mo at that point in his testimony.

15 But is there any objection to those in case for some  
16 technical reason they weren't formally moved? They were  
17 certainly discussed. Is there any objection?

18 MR. SMITH: Your Honor, Ms. Moreno has the exhibit  
19 list, so I'm not --

20 THE COURT: All right.

21 MS. MORENO: I'm so sorry, Your Honor, I was  
22 distracted.

23 THE COURT: That's all right. We're talking about  
24 two of the FedEx pictures.

25 MS. MORENO: Yes. No objection.

1 THE COURT: No objection? All right, those two are  
2 in.

3 (Government's Exhibit Nos. 7-201B and 7-201D were  
4 received in evidence.)

5 MR. KROMBERG: Thank you, Your Honor.

6 Now, on our list, we had the *Miranda* warning form  
7 5-302, and I remember it was under discussion --

8 THE COURT: I don't think it was necessary because  
9 there was no issue about that, so that's out.

10 MR. KROMBERG: That's fine. Okay. The two others  
11 that came in, I believe, during Khalil's testimony -- I  
12 shouldn't say two; one -- 11-500, and that was matched to  
13 Government Exhibit 12-17, which is a stipulation for 11-500.

14 THE COURT: Hold on a second. 11-500 is in.

15 MR. KROMBERG: And 12-17 is the stipulation that  
16 describes --

17 THE COURT: There's no objection to the stipulations  
18 being --

19 MR. KROMBERG: Oh, okay.

20 THE COURT: Is there? I want to hear from the  
21 defense.

22 MR. KROMBERG: I'm sorry, I was confused. 12-17 is  
23 in. I wrote it on my note to let you know that 12-17 was in  
24 about 11-500, but since it's in, that problem is solved.

25 THE COURT: All right. First of all, was there

1 any -- we normally send the stipulations to the jury. Is there  
2 any issue from the defense about that?

3 MS. MORENO: Our list shows that 11-500 is in as  
4 well.

5 THE COURT: Yeah. So 11-500 is definitely in.

6 MR. KROMBERG: And Government Exhibit 10-903 is in,  
7 but there's a stipulation that states what it was, and I, I  
8 must have forgotten to read the stipulation. Stipulation  
9 No. 24, which refers to Government Exhibit 10-903 as having  
10 been found by FBI on a CD found in the course of searching the  
11 residence of defendant Nicholas Young in August 2016. And  
12 that's Government Exhibit 12-24.

13 THE COURT: Is there any objection to 12-24 going in?  
14 Again, we normally let all of the stipulations go to the jury.

15 MS. MORENO: 12-24 is a stipulation?

16 THE COURT: Yes.

17 MR. KROMBERG: Well, Government -- Stipulation No. 24  
18 is Government Exhibit 12-24.

19 THE COURT: The 12 series are your stipulations,  
20 correct, Mr. Kromberg?

21 MR. KROMBERG: Yes, Your Honor.

22 MS. MORENO: That's fine.

23 THE COURT: Is there -- there's no objection? All  
24 right, that's fine. That's in.

25 (Government's Exhibit No. 12-24 was received in

1 evidence.)

2 MR. KROMBERG: And all of the rest that we have are  
3 the ones that the Court has.

4 THE COURT: All right. Well, the only issue, though,  
5 that I don't think is yet totally resolved is that summary  
6 exhibit. I've not seen the revised one.

7 Has the defense received a copy of that?

8 MR. SMITH: You're referring to the final Government  
9 Exhibit 16-000 that --

10 THE COURT: Correct.

11 MR. SMITH: -- that was created on December 14 at  
12 10:14 p.m.?

13 THE COURT: Yes.

14 MR. SMITH: Yes, we have received it, and we object  
15 to its inclusion in evidence.

16 THE COURT: All right, let me take a look at it.

17 MR. TURGEON: Your Honor, the only -- for Your  
18 Honor's reference, the only change in that from the copy Your  
19 Honor has -- does Your Honor have a copy of this?

20 THE COURT: Did you give me the revised one? I have  
21 the old one.

22 MR. TURGEON: Here's the one from today. Thank you.

23 The only difference other than the highlighting will  
24 be removed from the final version and there's one entry that  
25 will be taken out that I'm trying to find -- Your Honor, I

1 believe the entry that will be taken out is the one that I  
2 marked on your copy with an X, to the left of the highlighted  
3 entry that's coming out, and that is -- and that is on page 4,  
4 the entry for November 2, 2010, because I don't believe that  
5 was admitted into evidence.

6 MR. SMITH: And, Your Honor, however the Court rules,  
7 we'd just like to note the particular subject matter of our  
8 objection on the record.

9 THE COURT: Go ahead. Let me hear your objection.

10 MR. SMITH: Okay. So there's a couple of things we  
11 object to here. We don't dispute that this is a useful aid for  
12 Agent Caslen's testimony. It was very useful, including to the  
13 defense, but the -- to introduce this into evidence creates a  
14 misleading impression in the jury's mind possibly that this is  
15 reflective of every activity Mr. Young has conducted in this  
16 period, and it's just prejudicial after prejudicial after  
17 prejudicial item.

18 You can see that it's in chronological order, so it  
19 creates this view that is distorted. It creates a kind of  
20 selective, narrow view of what Mr. Young was doing during that  
21 period, when if Your Honor looks at the dates, it's all  
22 cherry-picked.

23 If you see that the dates in December 2007, almost  
24 all of the, you know, the vast majority of the government's  
25 predisposition evidence before 2010 was downloaded on the same

1 day, Your Honor, so we think it's misleading.

2 The second objection we have is that some of the  
3 highlighted additions to it include visits to Muslim countries.  
4 To the extent this is being used to suggest a predisposition to  
5 support terrorism, I don't know what, what sort of  
6 constitutional question you want to raise here.

7 THE COURT: I can shorten your argument. This to me  
8 would be like letting Agent Caslen's testimony be in the jury  
9 room, which we don't do. It's far too detailed. It speaks too  
10 much as if he were in the witness -- in the jury room speaking  
11 the case to the jury. The jury has to rely on their own  
12 memory.

13 Had this been less detailed, just a more general, a  
14 few blocks, I think it would be helpful to the jury, but it's  
15 way too detailed. It does include information, you know, it  
16 has the exhibit number, the witness name. It's basically  
17 putting a government witness in the jury room.

18 I'm going to sustain the objection, and this exhibit  
19 will not go in.

20 MR. SMITH: Thank you, Your Honor.

21 THE COURT: All right? It was very helpful,  
22 Mr. Kromberg, but it's too much for the jury.

23 MS. MORENO: Your Honor?

24 THE COURT: All right, yes, ma'am.

25 MS. MORENO: There is one final defense exhibit that



1 I've discussed with the government.

2 THE COURT: All right.

3 MS. MORENO: It's a photograph of Mr. Young with his  
4 father on the day -- it's up on the screen now -- that he  
5 graduated from the Police Academy. We failed to introduce that  
6 through any of the witnesses; however, the government is not  
7 objecting to that; and if we need to reopen just to admit that,  
8 we can do that.

9 THE COURT: No. Of course, you may have that in.  
10 And what number are we putting on that?

11 MS. MORENO: It would be Defense Exhibit No. 25, I  
12 believe.

13 THE COURT: 25?

14 MS. MORENO: Next in line. 25.

15 THE COURT: Yes, 25. All right.

16 (Defendant's Exhibit No. 25 was received in  
17 evidence.)

18 THE COURT: Now, is that -- is there a hard copy of  
19 that in the folders yet?

20 MS. MORENO: Is there a hard copy?

21 THE COURT: Do you have a hard copy of it?

22 MR. SMITH: No, we're publishing it. We're just  
23 publishing it on the screen.

24 THE COURT: Well, I know, but how is the jury going  
25 to see it?

1 MR. SMITH: The jury can --

2 THE COURT: They're not going to be able to take it  
3 back with them.

4 MS. MORENO: It's going to be used during closing,  
5 Your Honor.

6 MR. SMITH: It's just a demonstrative for closing,  
7 Your Honor.

8 THE COURT: But you want the jury to have it as --

9 MR. SMITH: We can, we can have it printed out. Our  
10 paralegal can have it printed out immediately.

11 THE COURT: All right, you need to have it printed  
12 out so when the evidence goes to the jury, they have it with  
13 all of your other exhibits. Other than the audiotapes, all of  
14 your exhibits should be in hard copy so they'll go back with  
15 the jury.

16 MR. SMITH: All of the other exhibits are in hard  
17 copy.

18 THE COURT: All right, that's fine. So we don't need  
19 to reopen the case for that.

20 All right, in terms of the verdict form, I'm not sure  
21 if we have a copy of that for you at this point or not. The  
22 verdict form is going to be, there should be no surprises on  
23 it. As I said, we've taken off the first paragraph that the  
24 government had on their proposed one, so it's just going to be  
25 the second, third -- what I'm calling second, third, and fourth

1 paragraphs, all right?

2 In terms of the, of the jury charge, as I said, I  
3 thought we had a pretty valuable pretrial charge, and not much  
4 has changed during the case. So let me tell you what I've  
5 given you in terms of the Court's proposed final charge.

6 The first group of instructions that you've got there  
7 are what I would call essentially boilerplate instructions.  
8 They are mirror images of what the government had submitted in  
9 their early instructions for which there was no objection,  
10 other than Instruction No. 11, which is on page 12 of your  
11 packet. The defense did object to an instruction telling the  
12 jury that the government's use of undercover agents and  
13 informants is not a problem.

14 That's a standard instruction we've given before in  
15 this type of case. It is proper to give that to the jury, and  
16 so I'm not -- I'm overruling that objection.

17 Now, since I've -- since I just struck 16-000, I'm  
18 not even sure we need a demonstrative exhibit instruction --

19 MR. KROMBERG: That's correct.

20 THE COURT: -- because there are no other  
21 demonstrative exhibits in this record; is that correct?

22 MR. SMITH: Correct.

23 THE COURT: All right. I'm therefore going to remove  
24 10, so you can remove 10 from your packet, all right? And  
25 we'll renumber these at some point. Okay.

1 MR. SMITH: Did Your Honor say we will renumber them?

2 THE COURT: I will renumber them because I eventually  
3 give them to the jury after I've instructed them. But 11 is  
4 staying in because that is correct.

5 Now, in terms of the expert witness instruction, I  
6 believe the government had a line in there about whether  
7 there's other expert testimony that might be contradictory.  
8 There was only one expert in the case, so we edited that  
9 instruction, so that's not in there.

10 I gave my standard law enforcement witness  
11 instruction, which is 14.

12 I went ahead and included an interest in outcome. I  
13 can take that out. I don't know if that was in the  
14 government's original instruction, but sometimes defense like  
15 that in because either the informants, because you had the  
16 issue about getting paid for successful whatever, I can take it  
17 out because it wasn't within the government's group. So let me  
18 know if you want that in or out.

19 MR. SMITH: Your Honor, we're fine with it.

20 THE COURT: You're fine with that?

21 MS. MORENO: Yeah.

22 THE COURT: All right, we'll keep that in.

23 Instruction 18, inconsistent statement, that's a  
24 pretty standard instruction, and there were inconsistent  
25 statements here, so I'm leaving that in.

1           And with 19, I will give B. That's the alternative  
2 instruction as to whether a defendant testifies or not.

3           Are you satisfied with that instruction, 19B?

4           MR. SMITH: We're satisfied.

5           THE COURT: All right. On 20 is a general law about,  
6 about the indictment, that it's not evidence, only the offense  
7 charged, and each count gets considered separately. Those  
8 again are standard. No objection?

9           MR. SMITH: No objection.

10          THE COURT: All right. On or about, that's again a  
11 standard instruction. There shouldn't be any dispute about  
12 that.

13          The explanation of disjunctive proof, which some day  
14 we've got to get that figured out because it's terrible, but  
15 that's a standard one.

16          Now, I decided since we have "attempt" running  
17 through all three counts, that there ought to be a general  
18 introduction to "attempt" before we even get into the counts.  
19 So Instruction 23 is different only in structure, not in  
20 content.

21          So it reads: In Count 1, Nicholas Young is charged  
22 with attempting to provide material support or resources to a  
23 foreign terrorist organization. In Counts 2 and 4, he's  
24 charged with attempting to obstruct justice.

25          Then I'm defining "attempt." An attempt means the

1 defendant did some act that under the circumstances as he  
2 believed them to be, which is language which the defense wanted  
3 the Court to add, was a substantial step toward the commission  
4 of the substantive crime. For example, to show that Nicholas  
5 Young is guilty of the offense charged in Count 1, the  
6 government must prove beyond a reasonable doubt that he did  
7 some act that, under the circumstances as he believed them to  
8 be, was a substantial step toward the commission of a crime of  
9 providing material support or resources to a foreign terrorist  
10 organization.

11 MR. SMITH: Correct.

12 THE COURT: That incorporates your language.

13 And then the substantial step is defined. There's a  
14 little repetition here because when I go through the elements  
15 for Count 1, some of that's repeated, but anyway, there was no  
16 objection to what is now 24. That is the nature of the  
17 offense.

18 The fact that there's a -- that the government  
19 added "as that term is defined" I don't think is a problem even  
20 though the defense doesn't like it because we have the  
21 definition further down.

22 Instruction 25, there was no objection to that.

23 MR. SMITH: Your Honor, may I make one point before  
24 the jury returns at 1:30?

25 THE COURT: Yes.

1 MR. SMITH: So counsel haven't had a chance to eat  
2 lunch or use the restroom since the Court just --

3 THE COURT: Do you need a five-minute bathroom break?  
4 We're going to -- we're going to break. I'm going to give you  
5 time to get a little bit of lunch, not a full hour, and to --  
6 but if you need a break this morning, we'll take a break right  
7 now.

8 MR. SMITH: Not at this moment but when the jury  
9 comes back at 1:30.

10 THE COURT: We're going to tell them at 1:30 that  
11 we're not ready and they'll get another half-hour.

12 MR. SMITH: Thank you.

13 THE COURT: So the statute, there's no issue about  
14 that. Then we go through the elements, and I don't recall that  
15 there's any real dispute about the elements as the government  
16 has laid them out here.

17 The first element for Count 1 is that the defendant  
18 knowingly and intentionally attempted to provide material  
19 support or resources to a designated foreign terrorist  
20 organization; and two, that the defendant knew that ISIL, also  
21 known as ISIS and the Islamic State, was a designated foreign  
22 terrorist organization or had engaged or was engaging in  
23 terrorist activity or terrorism; and three, that the defendant  
24 did some act that was a substantial step in an effort to  
25 provide material support or resources to ISIL, also known as

1 ISIS or the Islamic State.

2 And then I redefine the substantial step.

3 MR. SMITH: No objection, Your Honor.

4 THE COURT: All right. Then I'm giving the  
5 government's proposed instruction on foreign terrorist  
6 organization, and the defense does object, but I'm finding  
7 based on the evidence in the record that I am going to instruct  
8 the jury that on May 2014, the Secretary of State amended the  
9 designation, etc. In other words, I am going to basically  
10 indicate that.

11 MR. SMITH: And, Your Honor, we just object. This  
12 instruction appears to go further than what the government  
13 originally requested, which I believe in the government's  
14 original --

15 THE COURT: Mr. Smith?

16 MR. SMITH: The government's original instruction, it  
17 said that al Qaeda in Iraq was designated by the Secretary of  
18 State on October 15, 2004, as a foreign terrorist organization  
19 and that the ISIS name was added as an alias in May of -- oh,  
20 it says here: I instruct you that in May of 2014, the  
21 Secretary of State amended the designation to add the  
22 alias . . . as the primary name of this . . . and added the  
23 following . . .

24 Okay. And Your Honor is ruling on the basis of  
25 Dr. Gartenstein-Ross's testimony?



1 THE COURT: Plus the Federal Register, all right?

2 MR. SMITH: Okay.

3 THE COURT: All right?

4 MR. SMITH: Thank you, Your Honor.

5 THE COURT: All right. Then in terms of material  
6 support, I think I may have told you yesterday, but I took out  
7 some of the categories because they're absolutely unrelated to  
8 this case, and there's no sense having them there. Again, it's  
9 not meant to be a primer on the law of terrorism. It's meant  
10 to be the law that they need to decide the case.

11 I did add at the defendant's request, although again,  
12 I don't really think it's needed here, but the training and the  
13 expert advice or assistance.

14 MR. SMITH: Your Honor, we added those originally,  
15 just in case the Court is curious, because we understood that  
16 the government was going to attempt to charge a misleading  
17 statement under Count 1 and that they charged the wrong  
18 statute. They should have used 2339(a).

19 So I included these to -- I included these to cover  
20 the scenario where they would realize they would, you know,  
21 they were trying to use 2339(b) and they would have to use the  
22 assistance --

23 THE COURT: Well, I think the training and expert  
24 advice ought not to go to the jury. I mean, I think it's  
25 adding extraneous information.

1 MR. KROMBERG: We have no issue with -- we're fine  
2 with it not going to the jury.

3 MR. SMITH: We're fine with it as well.

4 THE COURT: All right. Then just so you know, we'll  
5 give you a revised 28, but it will have the last two paragraphs  
6 out, all right?

7 And for that matter, let's look at the rest of the  
8 terms. I mean, what's involved in this case is property,  
9 intangible or tangible, including currency or monetary  
10 instruments. I think "training" should come out of that first  
11 paragraph.

12 MR. SMITH: No objection.

13 THE COURT: What about from the government?

14 MR. KROMBERG: No objection, Judge.

15 THE COURT: All right.

16 MR. KROMBERG: We never said this was a training  
17 case.

18 THE COURT: Right. Expert advice or assistance?

19 MR. KROMBERG: No.

20 THE COURT: You-all agree with that?

21 MR. SMITH: Agreed.

22 THE COURT: It comes out. Okay.

23 Communications equipment? Arguably, the --  
24 arguably -- I don't know how the government wants to put that.  
25 I mean, the cards were --

1 MR. KROMBERG: It was communications equipment and  
2 facilities, but it's not really what we're focused on, but it  
3 is covered.

4 THE COURT: It's the currency or monetary  
5 instruments. It's the cards --

6 MR. SMITH: Yeah.

7 THE COURT: -- it seems to me.

8 Yeah, I'm going to -- or personnel. So how that  
9 instruction is going to read then is: The term "material  
10 support or resources" includes any property, tangible or  
11 intangible, or service, including currency or monetary  
12 instruments.

13 MR. KROMBERG: Judge, I think it should also be  
14 personnel, though, because --

15 THE COURT: Because using them to recruit.

16 MR. KROMBERG: Correct.

17 THE COURT: Or personnel, all right. Other than  
18 that, any objection?

19 MR. KROMBERG: No objection, Judge.

20 THE COURT: How about from the defense?

21 MR. SMITH: We object to personnel.

22 THE COURT: All right. I'll leave it in, though,  
23 because that was sort of the explanation as to why the cards  
24 were needed, all right? But that's all that one is going to  
25 read as, all right? All right.

1           Then I believe --

2           MR. KROMBERG: If Your Honor is looking at one that  
3 says "provision of personnel" --

4           THE COURT: Yeah.

5           MR. KROMBERG: -- fine, we withdraw that. Not  
6 necessary.

7           THE COURT: Let's take 29 out entirely. Any --

8           MR. SMITH: No objection.

9           THE COURT: All right, that's out. Okay.

10          All right, then I don't believe there was any  
11 objection to how the government proposed the nature of the  
12 offense for Count 2 and Count 4.

13          The definition in the statute, which is Instruction  
14 32, there was no objection to that. And I don't -- I think I  
15 actually changed what the government had for the elements  
16 because the first element should be that defendant unlawfully  
17 and knowingly attempted to obstruct, influence -- I know how I  
18 did it. You had the -- your instruction originally had the  
19 substantive offense or attempted to do it, and I decided why  
20 put it that way? So I've made it more direct.

21          If you compare it to what the government originally  
22 submitted, which is --

23          MR. SMITH: No objection, Your Honor.

24          THE COURT: All right, so that's how 33 will go in.

25          Then factual impossibility is a correct statement of

1 the law.

2 MR. SMITH: Oh, actually, you know what? Your Honor,  
3 can we take one step back? I didn't understand Your Honor's  
4 point, but I just did. So on Instruction No. 33 --

5 THE COURT: Correct.

6 MR. SMITH: -- I believe Your Honor ruled in the  
7 charging conference that we had before the trial that the Court  
8 was going to indicate that an FBI investigation is not an  
9 official proceeding.

10 THE COURT: Yeah, but we've got the grand jury in  
11 here now. I'm taking out the FBI business entirely. That's  
12 not in this instruction, though.

13 MR. SMITH: But if the government attempts to prove  
14 its case through the FBI investigation --

15 THE COURT: But they're not, I don't believe.  
16 They've got the grand -- because among other things, they've  
17 clearly established there was a grand jury investigation.

18 MR. SMITH: I believe their position is it's either.  
19 I believe their position is it could be either an FBI  
20 investigation or the grand jury.

21 MR. KROMBERG: Your Honor, theoretically, we don't  
22 want to waive the argument that in another case, there might be  
23 a possibility of an FBI investigation. In this case, there was  
24 a grand jury investigation.

25 THE COURT: I'm not taking -- the point is I'm not

1 taking judicial notice that an FBI investigation --

2 MR. KROMBERG: And that's fine.

3 THE COURT: -- qualifies.

4 MR. KROMBERG: It's not necessary in this case.

5 MR. SMITH: And, Your Honor, here's why it should  
6 become important whether we clarify in the instruction whether  
7 an FBI investigation is an official proceeding: Agent Caslen  
8 just testified about some occasions in which Mr. Young gave an  
9 indication he might have been under surveillance or under  
10 investigation.

11 If an FBI investigation is separate in an official  
12 proceeding category from a grand jury investigation, it's  
13 easier for the --

14 THE COURT: Let me stop you. You're talking about  
15 the wrong instruction. This instruction is not your problem.  
16 Your problem is 35. So let's just take it one instruction at a  
17 time.

18 MR. SMITH: Okay.

19 THE COURT: All I, all I want to make sure is  
20 everybody is comfortable with 33 because I changed the literal  
21 way in which the government presented 33 by putting "attempt"  
22 first.

23 MR. SMITH: No objection.

24 THE COURT: All right. And the government --

25 MR. KROMBERG: That's fine.

1           THE COURT: All right. Then 34 addresses the fact  
2 that -- factual impossibility is not a defense, which is a  
3 correct statement of the law.

4           35 has the definition of "official proceeding," and  
5 there I'm taking it right from the statute. You can't go wrong  
6 on that. That's what the statute says, and that's all we're  
7 going to say. You-all can argue to the jury however you want  
8 to argue the case, but that's the law.

9           MR. SMITH: Okay. With respect --

10          THE COURT: And if the jury -- now, if the jury comes  
11 in with a question, we'll have to address it down the road, all  
12 right? If they say, well, is an FBI investigation alone  
13 sufficient, then I'm going to have to wrestle with it because I  
14 told you I thought the Ninth Circuit case was pretty strong on  
15 this, but the bottom line is this is a direct quote from the  
16 statute, so it cannot be a misstatement of the law.

17          MR. SMITH: Your Honor, we understand the Court's  
18 ruling. We're just pro forma filing an objection to the extent  
19 that we might not understand when the jury gets the question,  
20 whether it's finding an official proceeding on an FBI  
21 investigation or grand jury, we will not know, so the purpose  
22 of the instruction would be to avoid the scenario where --

23          THE COURT: All right. I understand your position,  
24 but I'm -- all right.

25          All right, the official proceeding need not be

1 pending. Again, I'm not even sure you need that since there's  
2 no dispute in this evidence that there was an official  
3 proceeding, that is, the grand jury.

4 MR. KROMBERG: That is true. We withdraw it.

5 THE COURT: Is there any objection to that being  
6 withdrawn?

7 MR. SMITH: No objection.

8 THE COURT: All right, so 36 is out. We'll kill a  
9 few fewer trees this way, all right.

10 Obstruction need not be successful. That again is a  
11 correct statement of the law. I assume there's no objection to  
12 37.

13 MR. SMITH: No objection.

14 THE COURT: All right. 38, that's a standard  
15 definition of "corruptly." Is there any issue with that? I  
16 don't think there was.

17 MR. SMITH: No objection.

18 THE COURT: All right. 39, knowingly, that's a  
19 standard instruction.

20 MR. KROMBERG: Judge, I lost track.

21 THE COURT: Yeah.

22 MR. KROMBERG: What instruction is No. 39?

23 THE COURT: 38 is corruptly.

24 MR. KROMBERG: Okay.

25 THE COURT: Now, we gave you a copy of what we're



1 going to do. You're probably reading from your original  
2 instructions.

3 MR. KROMBERG: That's right. I'm mostly following  
4 along, but I lost you at that point.

5 THE COURT: Okay. Because the order in which you  
6 gave me your instructions didn't always in my view make logical  
7 sense, all right?

8 All right. Now, the 39 again is the standard  
9 knowingly instruction. Is there any issue about that?

10 MR. SMITH: No, Your Honor.

11 THE COURT: All right. And 40, the willfully  
12 instruction, any dispute about that?

13 MR. KROMBERG: Which one is 40, Judge?

14 MR. SMITH: Willfully.

15 THE COURT: Willfully.

16 You do have a set. We gave you a set.

17 MR. TURGEON: We don't, Your Honor.

18 THE COURT: Sean, did we not give them?

19 THE LAW CLERK: They definitely have a set there.

20 THE COURT: You do.

21 MR. KROMBERG: Oh, this makes it easier.

22 THE COURT: Yeah. All right, there's no problem with  
23 40?

24 MR. SMITH: No objection.

25 THE COURT: All right. These are new numbers. 41

1 again is standard right out of the instruction books. Proof of  
2 knowledge or intent?

3 MR. SMITH: Just to clarify, by instruction books,  
4 Your Honor means the Fourth Circuit standard jury instructions?

5 THE COURT: They've been used a million times and  
6 never been reversed, never been questioned. They're either  
7 coming -- most of them come out from O'Malley, some of them  
8 come out from Sand's, and they've all been -- these are  
9 standard instructions.

10 MR. SMITH: No objection.

11 THE COURT: I'm not sure we need motive. It's never  
12 really been argued in this case. Sometimes it goes in;  
13 sometimes it doesn't. Does anybody care about motive?

14 MR. KROMBERG: I do, Judge. The reason, if the  
15 defense is sort of --

16 THE COURT: Acting out of friendship?

17 MR. KROMBERG: *The Washington Post* defense that was  
18 floated in *The Washington Post*, if the closing argument is  
19 that, well, he did it not because he was trying to support ISIS  
20 but he was doing it because he was, wanted to help a friend --

21 THE COURT: All right.

22 MR. KROMBERG: -- I think it does --

23 THE COURT: It is -- this is the standard  
24 instruction, so the language in here is not a problem. Do you  
25 agree with giving it or not giving it?

1 MR. SMITH: Does the government take -- just to  
2 clarify Mr. Kromberg's comment, does the government take the  
3 position that it is a defense to the charge, Count 1 charge  
4 that if Mr. Young had provided gift cards to the informant Mo  
5 for the reason that he was his friend and not to support ISIS,  
6 that is a defense to charge 1?

7 THE COURT: A good motive doesn't excuse you from  
8 committing a crime.

9 MR. SMITH: Correct, Your Honor, but I understood  
10 Mr. Kromberg to be saying that -- Mr. Kromberg referenced the  
11 defense of indicating the gift cards had been sent to Mo  
12 because he was his friend and not because he was in ISIS.

13 THE COURT: In any case, we don't know what your  
14 closing argument is going to be, so I could also hold this in  
15 abeyance, but I think motive probably is not an improper  
16 instruction to give in this case.

17 MR. KROMBERG: I agree, so that in case that's what  
18 the defense argument is, the jury will be properly instructed.

19 THE COURT: All right.

20 MR. SMITH: No objection.

21 THE COURT: All right. Now, the entrapment defense,  
22 again, I've refined that, because that's why I asked you the  
23 question earlier. So the defense -- the defendant asserts as  
24 to Count 1 that he was a victim of entrapment. An entrapment  
25 defense has two elements, and the elements, there's no dispute

1 about those, but there's no entrapment defense as to Counts 2  
2 and 4.

3 Everybody agree about that?

4 MR. SMITH: Agreed, Your Honor.

5 THE COURT: All right. I think the instructions  
6 you'll need to look at the most carefully are the entrapment  
7 instructions. The entrapment analysis, I think, is a correct  
8 statement. It's very close if not exactly what the government  
9 did. I can't recall now whether we made any changes to it.

10 And the only objection the defense had, as I recall  
11 our earlier conference, about inducement is you didn't want  
12 terms defined until the jury asked for it, and as I told you  
13 back then and I'm not changing my position on this, you give  
14 the jury as many definitions as you think they may need to  
15 understand the case, and I don't recall there being any dispute  
16 about the actual language of the explanation of what inducement  
17 is.

18 And the next instruction, which is 46, is  
19 predisposition.

20 MR. SMITH: The next instruction is 45, Your Honor,  
21 inducement?

22 THE COURT: 45 is inducement, is a definition of  
23 "inducement."

24 MR. SMITH: So we do object to this, but we've  
25 already stated our reasons.

1           THE COURT: Right. All right, so I'm overruling that  
2 objection, and that will be that.

3           Now, 46 simply combines the three or four government  
4 instructions on predisposition onto one page. It makes it  
5 easier for the jury to look at, and I think again those various  
6 points of law are correct.

7           MR. SMITH: So, Your Honor, the one objection we  
8 would make here is that if Your Honor sees the first sentence  
9 in predisposition, Instruction No. 46, it reads:  
10 Predisposition refers to the defendant's statement before  
11 government agents made any suggestion that he commit a crime.

12           And if Your Honor considers the *Jacobson* decision,  
13 the rule of law is that predisposition refers to the  
14 defendant's state of mind before first contact with a  
15 government agent, which is not necessarily the same time the  
16 government agents made the first solicitation to commit the  
17 crime.

18           So -- and this is not just a semantic issue because  
19 if you go back to the *Jacobson* decision, the Supreme Court  
20 pegged the predisposition date to when Jacobson had first  
21 contact with an undercover agent sending him inappropriate  
22 materials. It did not refer -- the predisposition point did  
23 not refer to when the government first solicited Jacobson to  
24 purchase the inappropriate materials.

25           So there's a -- we believe that this should read:

1 Predisposition refers to the defendant's state of mind before  
2 the defendant's first contact with government agents in the  
3 investigation. We can give you a pin cite for that.

4 THE COURT: Mr. Kromberg, what's your position about  
5 that?

6 MR. KROMBERG: That sentence is a direct quote from  
7 the 2014 decision of the Fourth Circuit in *McLaren*. I think  
8 that had Khalil solicited a crime, as happened in *Jacobson*,  
9 when the first government agent solicited the crime, then it  
10 would be a correct statement of law that you go to the first  
11 solicitation of the crime, but I think that the Court is on  
12 safe grounds by, by pointing out that this is directly from  
13 *McLaren*. It's what the Court gave, this Court gave in  
14 *Carranza*, and this case is different from *Jacobson* because  
15 Khalil was not soliciting the defendant for a crime. He just  
16 happens to be a government agent who had contact with the  
17 defendant.

18 THE COURT: I think the government is correct, that  
19 it's only Mo who starts to talk at all about, you know, ISIS  
20 and whether, ultimately whether or not to provide --

21 MR. SMITH: If Mr. Kromberg were correct on that  
22 point of law, we would agree. He's not correct. If Your Honor  
23 does review the *Jacobson* decision, the first contact with  
24 government agents does not involve the solicitation to commit a  
25 crime.

1           So, Your Honor, we think that this statement is being  
2 pulled from *McLaren* in a context in which the Fourth Circuit  
3 was not considering a very nuanced question that we're  
4 considering now. There are other cases that indicate that Your  
5 Honor's previous ruling in this case that Mr. Khalil's meeting  
6 with Mr. Young would be relevant for predisposition purposes  
7 was a correct ruling. We have circuit precedent from various  
8 circuits indicating that the trigger point is the first contact  
9 with government agents.

10           THE COURT: Well, yeah, but I didn't get all  
11 the evidence -- didn't see all the facts until I heard Khalil  
12 testify. There's nothing in any of Khalil's testimony that I  
13 can recall that would indicate any suggestion on his part to  
14 the defendant of getting involved in any kind of criminal  
15 activity.

16           And again, as I recall this evidence, it's crystal  
17 clear that your client was not a target when Khalil met him.  
18 He met him because he was looking at Chesser and other people,  
19 and your client just happened to be in that milieu. After  
20 that, they started to have some contact.

21           But I don't think the evidence is in this record that  
22 supports that, so I'm going to go with this, with this  
23 instruction.

24           MR. SMITH: We just have one more fact for the  
25 record.

1 THE COURT: All right.

2 MR. SMITH: Your Honor said there's no evidence to  
3 suggest it. I don't have a transcript with me right now, but I  
4 believe that Khalil testified that he did initiate a  
5 conversation about the propriety of jihad in Kosovo with  
6 Mr. Young. That's one fact. I believe that Ms. Moreno  
7 elicited a couple more facts that are similar to that, but  
8 again, I don't have a copy of the transcript.

9 THE COURT: I'm not sure that would be sufficient  
10 anyway. So anyway, I'm going to go with this instruction.

11 MR. SMITH: Okay.

12 THE COURT: But as I said, recognize that it combines  
13 all the other sort of, you know, one sentence other further  
14 instructions. So, for example, predisposition is not limited  
15 only to crimes specifically contemplated by the defendant prior  
16 to government's suggestion. Instead, it is sufficient if the  
17 defendant is of a frame of mind such that once his attention is  
18 called to the criminal opportunity, his decision to commit the  
19 crime is the product of his own preference and not the product  
20 of government persuasion.

21 Predisposition may be found from a defendant's ready  
22 response to the inducement offered. A defendant's  
23 predisposition must be determined as of the time he was first  
24 approached by a government agent; however, inferences about  
25 that predisposition may be drawn from events after the two



1 parties came into contact.

2 I think it's all there. *Jacobson* is adequately  
3 covered in all of that, all right?

4 MR. SMITH: Okay.

5 MR. KROMBERG: That's fine, Judge.

6 THE COURT: Now, the venue instruction, in addition  
7 to what's here for Counts 2 and 4, is there going to be a venue  
8 issue as to Count 1? I've looked at some of the -- I did a  
9 quick look at some of the books on this, and unless the defense  
10 raises venue, often the government doesn't even have to get  
11 into it, and at least during the questioning in this case, I'm  
12 not sure a specific venue issue was ever raised.

13 But we've got for Counts 2 and 4 this instruction.  
14 Do I need to put in an extra just general venue instruction?

15 MR. SMITH: Your Honor, we would ask for the general  
16 venue instruction because there has been cross-examination on  
17 this issue. We cross-examined Agent Sikorski on this issue.  
18 There was a back-and-forth, again, we don't have the  
19 transcripts handy, but there was back-and-forth about where  
20 the, most of the codes were sent from and where they were  
21 received, and there was also cross-examination of Mo about  
22 where he received the text message.

23 THE COURT: Well, an easier way of doing this may be  
24 just something like this: In addition to the foregoing  
25 elements for Counts 1, 2, and 4, you must also consider whether

1 any act in furtherance of the crime occurred within the Eastern  
2 District of Virginia. In this regard, the government need not  
3 prove that the crime itself was committed in this district or  
4 that the defendant himself was even present here.

5 It is sufficient to satisfy this venue element if any  
6 act in furtherance of the crime occurred within this district.  
7 If you find that the government has failed to prove that, that  
8 any act in furtherance of the crime occurred within this  
9 district or if you have a reasonable doubt on this issue, you  
10 must then acquit.

11 Now, that's -- for reasonable doubt, that's really  
12 only a preponderance issue, but given the evidence in this  
13 case, I don't see how there could be a reasonable doubt.

14 MR. KROMBERG: Your Honor, if the defendant is making  
15 an issue of venue, for Counts 2 and 4, we'd ask that you give  
16 the instruction based on 18 U.S.C. 1512(i), which says that  
17 venue is proper in the district in which the proceeding was  
18 existence -- in existence. If the defendant says now that he's  
19 not making an issue of venue, then there's no need for the  
20 instruction.

21 THE COURT: For Counts 2 and 4.

22 MR. KROMBERG: Correct.

23 THE COURT: What about Count 1?

24 MR. KROMBERG: I think what Your Honor said about  
25 Count 1 was just exactly right.

1           THE COURT: All right. Well, let me hear about  
2 Counts 2 and 4. I mean, there's no question that the law  
3 provides that if the, if the proceeding is in this district,  
4 there's, there's venue.

5           MR. SMITH: Your Honor, this again raises the  
6 question of what the proceeding is. If there was no proceeding  
7 at all --

8           THE COURT: But there was. I mean, the evidence is  
9 unrefuted, is unrefuted that there was a grand jury  
10 investigation.

11          MR. SMITH: Your Honor, there was a grand jury  
12 investigation, but as Your Honor knows, in order to prove  
13 obstruction, the government has to prove Mr. Young knowingly  
14 obstructed the proceeding.

15          THE COURT: He doesn't have to know that there was a  
16 proceeding.

17          MR. SMITH: He doesn't have to know there was a  
18 proceeding. He has to know there was an investigation that  
19 could lead to a proceeding.

20          THE COURT: I don't think it goes that far, no.  
21 All right, I'll --

22          MR. SMITH: That's in the mens -- Your Honor, there's  
23 a mens rea subsection in Section 1512, and that's -- I'm not  
24 quoting it directly, but I'm paraphrasing it.

25          THE COURT: All right. We'll go ahead then, I'll

1 have to cobble together what, what the government has given me.

2 What about for Count 1? Is there any venue issue as  
3 to Count 1? If you're not raising it, I'm not giving it.

4 MR. SMITH: Oh, Your Honor, we take the position it's  
5 the government's burden. The defense doesn't have any.

6 THE COURT: I'm sorry?

7 MR. SMITH: We take the position it's the  
8 government's burden to establish venue.

9 THE COURT: All right. Then we'll put in, as I said,  
10 I'm going to put venue all in one instruction, however, rather  
11 than having two, all right? So that one you haven't quite seen  
12 yet, but it will have the government's -- or a version of  
13 what's given to you as, I guess it's, I can't see the number  
14 here, 47 or 48.

15 Presumption of innocence, that's the standard  
16 instruction we always give in this court, and then the last  
17 instruction is the unanimity requirement.

18 So that's what the charge looks like, all right? So  
19 I think the only thing I have to clean up is venue.

20 Anything else before I give you your break? We'll  
21 tell the jury that we're going to be a little bit later.

22 The government's index, you've got your index of  
23 exhibits together or ready to go?

24 MR. TURGEON: Again, Your Honor, we'll have it when  
25 we reconvene.

1           THE COURT: All right, all right. So I think half an  
2 hour should be enough time to grab lunch and do whatever  
3 you-all need to do.

4           MR. SMITH: Your Honor, can we have 45 minutes? We  
5 haven't had one break since we started this morning, and we  
6 haven't even had an opportunity to use the bathroom because  
7 we've been using, we've been --

8           THE COURT: All right, we'll tell the jury that  
9 because of the amount of evidence, we just have another delay,  
10 but we're going to definitely start up at 2:30, all right?

11          MR. KROMBERG: Thank you, Your Honor.

12          THE COURT: All right, we're in recess until 2:30.

13                 (Recess from 1:50 p.m., until 2:36 p.m.)

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1 A F T E R N O O N S E S S I O N

2 (Defendant present, Jury out.)

3 THE COURT: All right, counsel, we've given you the  
4 final set of instructions. I just want you to know on page 9,  
5 because there are no summaries or charts, I took that  
6 instruction out but replaced it with one that neither one asked  
7 for, which was tape recordings and typewritten transcripts, and  
8 so I think they have to have that. Not that they have  
9 typewritten transcripts, but they have the printed transcripts  
10 on those videos.

11 And I guess they do have some -- do they have  
12 transcripts in paper?

13 MR. KROMBERG: Yes, Your Honor.

14 THE COURT: All right. All right, in any case, they  
15 need that instruction a second time.

16 All right, is there anything further before we bring  
17 the jury in?

18 MR. SMITH: Yes, Your Honor. We just have one short  
19 objection to the ruling Your Honor made about 45 minutes ago  
20 indicating that the defense -- the predisposition standard in  
21 this case would require the government to prove the defendant's  
22 predisposition to commit the crime charged in  
23 Count 1 before the solicitation of the crime, as opposed to  
24 before Mr. Young's first contact with government agents.

25 We had believed we had a ruling from the Court on

1 this before trial, and we understand that this ruling changed  
2 about 45 minutes before our closing statements. Our entire --  
3 part of the entire structure of our argument in closing  
4 depended on the law of the case, which was that the first  
5 government contact with Mr. Young would be the trigger point  
6 for proving predisposition to commit the charged crime. So we  
7 are objecting on due process grounds.

8 THE COURT: Well, you've made your objection. I  
9 don't think actually the instruction is nearly as egregious as  
10 you think it is. I think it's there. In any case, we're going  
11 with the case as it is.

12 The government is always expected to protect its  
13 record. You've given me an instruction that I've used, and I  
14 think that the law there is appropriate. If the government  
15 thinks there's any defect, you need to tell us now.

16 MR. KROMBERG: Your Honor, we think that your  
17 instructions are fine. In fact, there is -- in one of your  
18 instructions, you do say that if the predisposition occurs  
19 before the first contact or it's measured, so I'm not sure what  
20 Mr. Smith's problem is.

21 MR. SMITH: The problem we're referring to, Your  
22 Honor --

23 MR. KROMBERG: If I may continue -- oh, I'm sorry --  
24 but I think that everything that's needed is there.

25 MR. SMITH: Your Honor, there was a conference we had

1 before trial in which, it wasn't a charging conference, because  
2 we just did that, but there was a kind of pretrial charging  
3 conference in which Your Honor -- we don't have the transcripts  
4 right now, but Your Honor read what it called the sort of  
5 preliminary predisposition standard that would be used at  
6 trial.

7 Ms. Moreno was in a colloquy with the Court about how  
8 the defense was taking the position the government had to prove  
9 predisposition beyond a reasonable doubt before December 2010,  
10 when Khalil testified that he met Mr. Young, and --

11 THE COURT: Well, here's what it says:  
12 Predisposition refers to the defendant's state of mind before  
13 government agents made any suggestion that he commit a crime.

14 MR. SMITH: And, Your Honor, the solicitation in this  
15 case is July 2016. I believe the government agrees with that,  
16 that date.

17 MR. KROMBERG: Your Honor, if you go to the last  
18 sentence in that very instruction, you say: A defendant's  
19 predisposition must be determined at the time he was first  
20 approached by a government agent.

21 That's what the defense wants you to say. I'm not  
22 sure what the problem is here.

23 MR. SMITH: We were just referring to the first  
24 sentence.

25 THE COURT: Well, but, I mean -- yeah, you're not



1 reading these carefully enough. It's all there. You can still  
2 make whatever argument you were going to make.

3 MR. SMITH: Thank you, Your Honor.

4 THE COURT: All right, that's great.

5 All right, 45 minutes. The government's got 30 for  
6 their opening and 15 for rebuttal; defense has 45. All right,  
7 are we ready to go?

8 MR. GIBBS: Ready to go, Judge.

9 THE COURT: Let's bring the jury in.

10 (Jury present.)

11 THE COURT: All right, ladies and gentlemen, I do  
12 want to -- have a seat, please. I do want to apologize for  
13 the, the delay. I hate wasting juries' time, but we had to get  
14 a lot of exhibits together and organized for you-all. We've  
15 done that now, and so we now start the closing arguments.

16 As I told you at the beginning of the trial, the  
17 government, because it has the burden of proof, gets to make  
18 the first closing argument. They have been given a half an  
19 hour in which to do that. Then the defense makes their closing  
20 argument. They have up to 45 minutes to make theirs. The  
21 government gets 15 minutes for rebuttal, and then I'll be  
22 giving you the instructions, all right?

23 So we're starting now with the government's opening  
24 closing argument. Mr. Gibbs?

25

## 1 CLOSING ARGUMENT

2 BY MR. GIBBS:

3 Thank you, Your Honor.

4 Ladies and gentlemen, as the judge just told you,  
5 this is the opportunity for the government to make its closing  
6 argument in this case, and what I will tell you is that when  
7 you go back to deliberate, you should find the defendant,  
8 Nicholas Young, who's seated back here, guilty of all three  
9 crimes in this case.

10 And I'll get to that more in a moment, but before I  
11 talk about that, I want to thank you-all for your service in  
12 this case. I know that this is a busy time of year. We've  
13 worked long days since we started this trial. You've looked at  
14 a lot of evidence, heard from a lot of witnesses, and I think  
15 everyone here in court recognizes how diligent and attentive  
16 you've been, so for that I want to express my gratitude.

17 Now, I said a minute ago that you should find the  
18 defendant, Nicholas Young, guilty of all three counts in the  
19 indictment. Why do I say that? I say that because put quite  
20 simply, the defendant is guilty and the evidence proves his  
21 guilt beyond a reasonable doubt.

22 Now, let's start with Count 1 of the indictment.  
23 That's the attempted material support to ISIS. The defense is  
24 claiming that the defendant was entrapped into committing that  
25 offense.

1           So let's talk about friendship a little bit. I  
2 expect the defense to argue that their client was entrapped  
3 into committing a violation of Count 1 by two government  
4 agents, Khalil and Mo, who used their friendships with the  
5 defendant to convince him to commit that offense. So let's  
6 start with Khalil. What do we know about him?

7           We know that Khalil was around the defendant from  
8 around 2010 to 2012, and the reason is because Young was  
9 friends with Saleh, the guy that Khalil was actually targeting.  
10 Remember Saleh, the guy that advocated jihad against Israel,  
11 who said that the U.S. and Israel were his enemies? Who  
12 endorsed shahid and martyrdom? Who expressed disgust at seeing  
13 a woman in our coalition forces, and who was outspoken along  
14 with the defendant in his disgust for Jews, calling them pigs?  
15 The guy who would take secretive walks around the golf course  
16 with Young and Khalil and who said jihad would solve a lot of  
17 our problems?

18           That guy was Saleh. He was the reason Khalil even  
19 got to know Young in the first place. And we know Khalil was  
20 never directly targeting Young because after Amine El Khalifi,  
21 yet another person in Young's circle, got arrested for plotting  
22 to blow up the U.S. Capitol, Khalil left. Would the FBI have  
23 really removed him if they wanted to use him to target the  
24 defendant?

25           But more importantly, Khalil couldn't have entrapped

1 Young because that crime didn't occur until much later. Do you  
2 really think Khalil was asking Young in 2011 or 2012 to help  
3 ISIS get Google Play gift cards in 2016?

4 There's another reason that Khalil couldn't have  
5 entrapped Young, and that's because Young had figured out that  
6 Khalil was a source. Remember how paranoid and security  
7 conscious Young was? The guy was a cop, after all, for 13  
8 years.

9 You heard that recording where Young told Mo all  
10 about the Marine guy, who was clearly Khalil, and if Young was  
11 using Khalil as an example and a cautionary tale to explain to  
12 Mo to be careful about whom you befriend, how could Khalil have  
13 successfully befriended and entrapped Young? Young's  
14 friendship with Khalil was not entrapment.

15 So then two more years go by until Young finally  
16 meets Mo. So how about him? At least in his case, he was  
17 targeting Young for at least some period of time, but what  
18 exactly did that consist of?

19 The two of them were around each other for less than  
20 six months, from May to October 2014. By the end, Mo had made  
21 it clear that he was leaving to go join ISIS, so the defendant  
22 suggested setting up covert e-mail accounts so they could  
23 communicate, and after that point when Mo allegedly left to go  
24 join ISIS, the FBI used that covert account to impersonate Mo.

25 And there is no question that Young believed Mo had

1 gone off to join ISIS. Getting rid of the device for real.  
2 Gonna eat the SIM card.

3 But the evidence you heard about their relationship  
4 just doesn't sound like it was so deep or compelling that Mo  
5 would have been able to convince Young to do anything he didn't  
6 want to do. They never visited each other's houses. They got  
7 together maybe 20 times or so. Weeks or even months might pass  
8 between e-mails from the Essa Kobayashi account.

9 Was Mo really a friend who could entrap a cop who had  
10 served for 13 years and who was incredibly paranoid?  
11 Incredibly paranoid. Burner phones, thinking the FBI was  
12 tapping his communications, take the battery out. A woman  
13 friend let him know that he was under investigation.

14 He told Mo there are 25,000 informants in mosques  
15 around this country. He said that a lot of the people being  
16 arrested for terrorism crimes made a mistake, and what was  
17 that? Communicating online with people who turned out to be  
18 agents or informants.

19 So perhaps we shouldn't limit the friendships in this  
20 case that we look at to just Khalil and Mo. Perhaps we should  
21 widen it out a bit to look at the friends that Young spent a  
22 lot more time with and knew a lot better than Khalil or Mo,  
23 friends in addition to Saleh and Khalifi such as Liban Mohamed,  
24 who, like Young, talked about how they should try to uncover  
25 informants. Friends like Farooque Ahmed, who was arrested for

1 planning to blow up the Washington Metro. Or Peshwaz, the guy  
2 that Mo was targeting in that May recording where he talked  
3 about jihad.

4 Or Hicham Hall or T.J. Singh, do you remember them?  
5 Do you remember how Young showed Mo those ISIS videos and said,  
6 "Hicham and T.J. watch these a lot"? And remember Hicham on  
7 that one recording from September where he told Mo about the  
8 real jihad in Afghanistan where you can kill Americans who are  
9 all Kevlared up?

10 Those were Young's friends. Those were the people he  
11 hung around with. Those were the circles Nick Young ran in.

12 Now, when the defense gets the opportunity to give  
13 their closing, I expect them to say that a big part of the  
14 entrapment in this case was the rapport building that Khalil  
15 and Mo did, but that's sort of the point, isn't it? If you  
16 have an undercover, they have to build up enough of a  
17 relationship to gain the trust of the target so you can figure  
18 out if the target is a threat or not, right?

19 It can't be the law that simply cultivating a  
20 friendship like that is entrapment, and, in fact, the judge  
21 will instruct you on the law, and what she will tell you  
22 regarding Count 1 is this: Simply cultivating the friendship  
23 of a target in preparation to present a criminal opportunity is  
24 not inducement to commit a crime. Unless that friendship  
25 involved coercion, threats, or pleas that would constitute more

1 than just providing an opportunity to commit the crime, the  
2 defendant's relationships with Mo and Khalil were not  
3 inducement.

4 Let's talk a little bit more about inducement. As  
5 the judge will also tell you in her instructions, inducement  
6 requires more than mere solicitation by the government.

7 "Inducement" is a term of art necessitating government  
8 overreaching in conduct sufficiently excessive to implant a  
9 criminal design in the mind of an otherwise innocent party.

10 So let's talk about these Google Play gift cards for  
11 a minute. Was there government overreaching in conduct  
12 sufficiently excessive to implant a criminal design in the mind  
13 of an otherwise innocent party? Not even close, ladies and  
14 gentlemen.

15 Let's think about what happened in this case. It  
16 wasn't until the summer of 2016 that this topic even came up,  
17 and the defendant willingly agreed to send the codes without  
18 any coercion or pressure: Inshallah, more codes will come your  
19 way.

20 Think back to those Threema messages. The defendant  
21 hadn't seen Mo in almost two years. His only means of  
22 communicating with the person he thought was Mo for most of  
23 those two years was through the covert e-mail account that he  
24 set up. He only accessed that account sporadically.

25 Remember the surveillance photos of him casually

1 strolling into the store so he could log on to the computer?  
2 He wasn't being pressured by any government agent to do that.

3 And when you look at those Threema messages to the  
4 defendant, they're barely a request, but don't take my word for  
5 it. When you get back in the jury room, take a look at all the  
6 communications that the FBI sent where they brought up the  
7 Google Play gift cards.

8 What you will see is that if those messages were  
9 written out grammatically, you wouldn't even be able to insert  
10 a question mark at the end of them: What we need is more of  
11 the Google codes. We have two very trusted brothers in U.K.  
12 who buy us Google gift cards.

13 The FBI employed about as light a touch with this  
14 defendant as they possibly could because they knew that  
15 anything overt would spook him. Now, certainly they were  
16 hoping that he would send the codes, and they gave him an  
17 explanation for the codes that they thought would appeal to  
18 him.

19 And what did they say? Let's come back to that in a  
20 minute because first I want to talk about the codes for a  
21 second, and we need to put one issue to rest because you heard  
22 the defendant's opening statement, and I expect a similar  
23 argument in closing, and the thrust of it is this: The  
24 government spent all this time investigating our client, and  
25 what do they have to show for it? \$240 worth of Google Play



1 gift cards.

2           Putting aside the fact that that six-year figure is  
3 really not right, what was the defendant told about these  
4 codes? He was told that each code represented an encrypted  
5 communication platform, meaning two people could use it to  
6 communicate secretly. On one end was an ISIS recruiter, and on  
7 the other end was a prospective ISIS fighter from the West. So  
8 with the investment of just \$10 or \$15, ISIS could bring a  
9 fighter to Dawah.

10           How much did the defendant provide? \$245. How many  
11 fighters would that represent? Fifteen, twenty? Twenty  
12 fighters that Officer Nicholas Young was willing to help send  
13 to join a foreign terrorist organization that burns people in  
14 cages, enslaves captured women, attacks western capitals, and  
15 then brags all about it in the ISIS propaganda videos that the  
16 defendant watched during his lunch break at work while serving  
17 as a police officer. I bet it tasted terrible, but no wonder  
18 he ate that SIM card.

19           And the \$245 figure is pretty interesting, too,  
20 because did you ever see any instance of the FBI asking for a  
21 specific amount? The defendant could have sent \$20 worth,  
22 maybe enough for a couple of fighters, but on his own  
23 initiative, he sent ten times that.

24           Now, let's go back to the explanation that the FBI  
25 gave the defendant about where these fighters would be sent.

1 He was told that they were being pushed to Wilayat Sirte, in  
2 Libya, and why would that appeal to the defendant? Because  
3 Libya was near and dear to his heart. He was a Libya Civil War  
4 vet from the seeds of Misrata in April and May 2011, just as  
5 the bumper sticker on his car said. He had fought with the Abu  
6 Salim Martyrs Brigade.

7 And what do we know about that group? Well, we heard  
8 Dr. Gartenstein-Ross say they were founded by people with  
9 connections to the Taliban and al Qaeda, and he even said that  
10 ISIS and the Abu Salim Martyrs Brigade were rivals.

11 So it seems sort of odd that the defendant would be  
12 sending money to buy secure apps to someone in ISIS, right?  
13 Well, not really, because what did the defendant say in his  
14 messages to Mo's account? He said the brothers he was with  
15 was, quote, like-minded with the brothers where you are. He  
16 said he wanted to see the division solved and the brothers  
17 united. He said that everyone needs to join under one banner  
18 to repel them.

19 Who was "them"? According to the defendant, it was  
20 Russia and the puppet coalition in the West and all the  
21 countries who were uniting to pummel ISIS.

22 And unlike his old friends in Libya, whom he was  
23 e-mailing as Malik the American, Mo was responding to his  
24 messages.

25 So consider the entrapment instruction. What the FBI

1 did with the Google Play gift cards simply doesn't rise to the  
2 level of inducement because it was mere solicitation, asking  
3 someone to commit a crime, and as the judge will tell you, the  
4 fact that government agents initiated contact with the  
5 defendant, suggested the crime, or furnished the ordinary  
6 opportunity to commit it is insufficient to show inducement.  
7 This was not inducement, and it's not even close.

8           Now, before we get to predisposition for Count 1, we  
9 should quickly dispose of the last two counts of the  
10 indictment. Now, the defense is not claiming that Young was  
11 entrapped into committing those two offenses. Those are the  
12 obstruction counts. And there really aren't any factual  
13 disputes about what happened.

14           In Count 2, it's alleged that he attempted to deceive  
15 the FBI with respect to the destination and purpose of Mo's  
16 trip. Did he do that? Of course he did.

17           As you heard in the recordings, it was the defendant  
18 who first told Mo that he should pretend that he was going to  
19 Turkey for a vacation. The defendant prepped him on what to  
20 say to Customs. He told him what to pack. He suggested how  
21 much money to carry. He told him the sorts of questions to  
22 expect and what certain codes on his ticket meant. And most  
23 importantly, the defendant told him to stick with the story  
24 that the defendant had given him and never waiver.

25           And you know what? When the FBI came around in

1 December 2015 to ask about Mo, the defendant stuck to that  
2 story, too, but it was a lie, and most importantly, those were  
3 lies that he came up with all on his own.

4 Now, the last count is the text message lie, and  
5 that's the one where the defendant believed that Mo was going  
6 to join ISIS, and he knew that was a really big deal. It's a  
7 federal crime. It's also something that the FBI would have to  
8 investigate fully and completely.

9 And the defendant knew from experience that such an  
10 investigation would eventually lead back to him, and when the  
11 FBI showed up, he was already thinking about what he could say  
12 to make it look like he truly believed that Mo had gone to  
13 Turkey for a vacation. So in order to bolster that story and  
14 knowing that the FBI would likely search Mo's phone and would  
15 search his phone, the defendant sent a text message that made  
16 it look as though he expected Mo back in the country by  
17 November 20.

18 You saw that text message. You saw the records from  
19 the defendant's phone, where he sent the text at 11:01 p.m.,  
20 and Mo forwarded it to John Minichello at 11:06 p.m.

21 You heard the defendant on tape saying that he was  
22 going to do this and that it would be, quote, good for me.

23 The defendant is guilty of that crime.

24 Now, before we move on, there's one last point I do  
25 need to make. All three counts in this indictment are charged

1 as attempts. Why is that? Because this was an undercover  
2 investigation. Mo was not really with ISIS, thankfully.

3 So even though the defendant wanted to provide  
4 material support to ISIS, he was only attempting to do so since  
5 the gift cards actually went to the FBI. And even though he  
6 lied about what Mo was doing, he was actually lying about an  
7 FBI source. And in her instructions to you, the judge will  
8 explain the law of "attempt."

9 Predisposition. Even though it's clear there was no  
10 government inducement in this case, if there had been any  
11 inducement, this still wouldn't be a case of entrapment because  
12 the defendant was predisposed to commit these crimes.

13 As the judge will instruct you, it is not entrapment  
14 where a person already has the readiness and willingness to  
15 break the law, and the mere fact that government agents  
16 provided what appears to be a favorable opportunity is not  
17 entrapment.

18 Now, the defendant already had a readiness and a  
19 willingness to break the law in this case, and you heard about  
20 that. You heard how the defendant, long before Khalil or Mo  
21 came into the picture, way back in the early 2000s, tell Ian  
22 Campbell, "Don't discount the Muslims' ability to fight the  
23 Jews."

24 Young even kept photographs in his house depicting an  
25 alliance between Islamists and the Nazis, and you saw that.

1 That was Exhibit 10-230. That was a poster that celebrated  
2 this alliance.

3 You saw Exhibit 10-231. That was a photograph that  
4 the defendant kept showing a meeting between Hitler and the  
5 Mufti of Jerusalem.

6 And Young himself, long before he met Khalil or Mo,  
7 embodies this alliance. He had a photograph of him dressed as  
8 a Nazi, and that was Exhibit 10-903. The creation date on that  
9 was in 2007.

10 He had another photograph of himself where he was  
11 dressed not in a Nazi uniform but in traditional Muslim garb  
12 holding a gun, and that's 14-119. That was in 2006, ladies and  
13 gentlemen.

14 The defendant kept a photograph of belching  
15 smokestacks on his phone for two years with words that read in  
16 part, "Together we can finish what Hitler started." And that  
17 was 4-203.

18 He kept a photograph showing two burka-clad  
19 individuals holding a sign saying, "God Bless Hitler." In  
20 fact, he could drive to his house in a truck with a bumper  
21 sticker that read, "Boycott the Terrorist State of Israel," and  
22 when he walked into his home, he could wipe his feet on an  
23 Israeli flag that he used as a door mat. That's 11-401.

24 When he and Mo set up the covert e-mail account so  
25 they could communicate, he picked Hitler's birthday as his own.

1           And you saw electronic versions and one paper version  
2 of *Inspire* magazine that he kept, and you heard  
3 Dr. Gartenstein-Ross explain what *Inspire* magazine was. You  
4 saw that photograph on the bumper of his truck that said "Libya  
5 Civil War Vet." You saw the Threema messages where he told  
6 Mo -- or the person he thought was Mo -- how he had been in the  
7 Abu Salim Martyrs Brigade back in 2011 and how he carried body  
8 armor back from that trip. And you saw the defendant describe  
9 that group as being like-minded with ISIS in his e-mails.

10           Ladies and gentlemen, this is who the defendant is,  
11 and this is who the defendant was long before he met Mo and  
12 long before he met Khalil. He was not entrapped by the  
13 government into doing anything. As careful as he was, as  
14 security conscious as he was, as much of a trained law  
15 enforcement officer as he was, he was also someone who was  
16 drawn powerfully to the Islamist cause.

17           He didn't try to help Mo go join ISIS because he  
18 really liked Mo. He did it because he really liked ISIS.

19           ISIS was putting into practice all of the things that  
20 he believed: the beheadings, the burnings, the things that he  
21 watched on the Light Revealed and the Light Reloaded videos  
22 during his lunch breaks at work. How did Dr. Gartenstein-Ross  
23 describe it? A winner's message.

24           All of the predisposition evidence in this case gives  
25 a glimpse into who this defendant is and what is important to

1 him. This interest in Nazis, the National Alliance, and other  
2 hate groups was not fleeting for the defendant. It lasted for  
3 a long time. It predated Mo, and it predated Khalil.

4 And when his focus did shift, it shifted to things  
5 like the Abu Salim Martyrs Brigade, ISIS, in trying to help Mo  
6 get over to Syria to fight, and to send money so other fighters  
7 could join in the cause, the cause of the Caliphate.

8 Friendship, inducement, predisposition. Those  
9 friendships with Khalil and Mo were nowhere near enough to  
10 entrap this defendant into doing anything he didn't want to do.

11 Inducement. The defendant was not induced into  
12 committing Count 1. There was no overreaching on the part of  
13 the government. There was no excessive conduct. The defendant  
14 was predisposed to commit Count 1 of this indictment. He was  
15 not coerced, and he was not entrapped. He committed all three  
16 crimes knowingly, willingly, and voluntarily, and because of  
17 that, I would ask that you find the only just verdict in this  
18 case: a verdict of guilty on all three counts.

19 Thank you, ladies and gentlemen.

20 THE COURT: All right, thank you.

21 Mr. Smith?

22 CLOSING ARGUMENT

23 BY MR. SMITH:

24 Good afternoon. Ladies and gentlemen, the case you  
25 just witnessed presents the jury with challenging issues that



1 are not simple, and because we've tried to fit a six-year  
2 undercover investigation into a few trial days, there are a  
3 number of issues, and it's a lot of information to digest, but  
4 one issue is the most important issue in this case that you  
5 will consider: Will we, the jury, allow the government's  
6 evidence to play to our emotions, our fear, and our anger, or  
7 will we tune out the noise and faithfully follow the rules as  
8 they are described to us by the Court?

9 I've represented Mr. Young over a year now. I've  
10 gotten to know him. I've had many conversations with him.  
11 I've learned much of what I know about this case from him, and  
12 I will confess to you that at some points, the noise has been  
13 very loud.

14 Much of what happened in this case is very far  
15 outside of our everyday experience -- handler agents, Libya,  
16 undercover operations -- but I'm here today to argue to you as  
17 best I can that justice requires tuning out the noise and  
18 faithfully following the rules as they are described to you by  
19 the Court.

20 Tuning out the noise and listening to the key parts  
21 of the case can be hard here, admittedly. It's kind of like  
22 trying to hear Mr. Young's voice on one of the tapes I tried to  
23 play for you at trial. The signal and the noise is faint, but,  
24 ladies and gentlemen, it is there.

25 You hear it in various parts of this case. Police

1 Officer McNulty, Nicholas's old friend who described to you a  
2 Nicholas that is very different from the government's  
3 description. He lived with Nick between 2004 and '7, and he  
4 testified that he saw Nick as not as a racist person, as  
5 supporting U.S. troops, as being in the ROTC with Nicholas, and  
6 as patriotic.

7           Officer McNulty testified that he used to hang out  
8 with Nicholas after 2007, that Nicholas had no racist views  
9 when it came to his dating habits, that he never exemplified  
10 racism around any of his friends or any of their mutual  
11 acquaintances. This was a government witness.

12           The testimony of Mo, the informant Mo in this case,  
13 admits that you that Nicholas would in his own way suggest Mo  
14 should not travel to Syria. You've heard this evidence. We've  
15 also resubmitted an exhibit with a disc that includes clips  
16 from all of the recordings we attempted to play at trial. We  
17 strongly urge the jury to review those clips before making any  
18 decision in this case.

19           There are also questions in this case about why and  
20 whether Mr. Young's early conversations with the informant Mo  
21 were not recorded and what's behind redacted information in  
22 certain government documents.

23           There are pictures of Nick's trip to Libya that  
24 you've seen, the trip where the government alleges he joined  
25 Abu Salim Martyrs Brigade. This jury saw pictures of Mr. Young

1 with families, children, on the beach.

2 Ladies and gentlemen, these points are what we call  
3 reasonable doubt, reasonable doubt that before the government  
4 made any efforts to induce Mr. Young to commit a crime,  
5 Nicholas had a predisposition to materially support terrorism.

6 If the jury is able to disregard the noise, which is  
7 very difficult, and follow the law, it will acquit Mr. Young of  
8 the charges in this case, and on behalf of Nicholas and Linda,  
9 we thank you for your service and your attention to our  
10 arguments.

11 The government has put on some unusual evidence in  
12 this trial. The main charge is that in July 2016, Nicholas  
13 attempted to materially support a terrorist group by agreeing  
14 to send Google Play gift cards to an undercover agent who had  
15 pretended to go to Syria.

16 Nicholas is not charged for possessing any of the  
17 pictures, pamphlets, or books you've seen throughout the trial.  
18 The First Amendment ensures that. But to prove its gift card  
19 case, the government has bombarded you with inflammatory  
20 pictures and literature. Many of these were not of militant  
21 Islamism at all. This is a travesty.

22 The government paid an expert witness to tell you  
23 white supremacists are like Islamist terrorists in his expert  
24 opinion. 2 plus 2 equals 5. The government paid \$16,000 to  
25 tell you that.

1           And the government subpoenaed Nicholas Young's old  
2 friends to come to the trial against their will and try to  
3 remember some off-color comments he might have made 10 years  
4 ago, 15 years ago.

5           Why did the government's case look like this? Why  
6 was the government bombarding you with Nazi pictures? It  
7 looked like this because buried beneath this mountain of  
8 inflammatory evidence that they have attempted to deceive you  
9 with over the course of this trial, there are facts showing  
10 Nicholas was entrapped. Pay close attention to these facts.  
11 They're often obscured in the government's case behind a lot of  
12 Nazi prejudicial evidence.

13           One, this is a material support for terrorism case  
14 without real ISIS terrorists. Two, the government has shown  
15 you no evidence Nicholas Young ever spoke to anyone actually in  
16 ISIS. Three, the government has shown you no evidence Nicholas  
17 Young ever attempted to join the group ISIS. Four, the  
18 government has shown you no evidence he ever attempted to give  
19 anything to the real ISIS at all. Five, the government has  
20 shown you no evidence ISIS does, in fact, request gift cards  
21 from anyone in this country.

22           The six-year-plus investigation leading up to this  
23 gift card charge involves government agents weaving a web of  
24 deception about militant Islam around Nicholas Young for six  
25 years. Much of the evidence of this case is unquestionably

1 offensive to many people. That's not in dispute. I'm one of  
2 those people.

3 But Nicholas's defense of entrapment in this case  
4 exists to prevent something more troubling than a Nazi picture  
5 but also less immediately obvious. The defense of entrapment  
6 exists to prevent a world where the government can insert  
7 undercover agents into people's lives for years, develop  
8 relationships, and encourage crimes, all without having to show  
9 the person was predisposed to commit those crimes beforehand.

10 And this particular sting operation raises special  
11 concerns. After the defendant succumbed to the government's  
12 pressure to commit a crime and raise the defense of entrapment,  
13 can the government now expose all the ugly parts of his life in  
14 response to his efforts to defend himself? Can the government  
15 prove the defendant had a predisposition to commit the  
16 government-induced crime by showing some ugly pictures and  
17 literature he possessed, even when it doesn't have to directly  
18 do with militant Islam at all? And can the government  
19 prosecute someone in this country through a series of  
20 guilt-by-association implications?

21 Ladies and gentlemen, these are very serious  
22 concerns, and the defense puts it to you that these are far  
23 more serious than some pictures in the defendant's basement.

24 I'd like to walk through the facts we've learned at  
25 trial, but let's first cover the charges. The burden is on the

1 government to prove the charges beyond a reasonable doubt.

2 Proof beyond a reasonable doubt is proof that leaves you firmly  
3 convinced the defendant is guilty.

4 Count 1, as Mr. Gibbs explained, is in the  
5 indictment, charges Nicholas with attempting to materially  
6 support a foreign terrorist organization by sending Google Play  
7 gift cards in July 2016 to someone he thought was a friend  
8 named Mo but who was, in fact, an undercover agent who had  
9 pretended to join ISIS in Syria.

10 To prove this count, the government must prove beyond  
11 a reasonable doubt that Nicholas knowingly attempted to provide  
12 material support and resources to a foreign terrorist  
13 organization, knowing that the organization was a designated  
14 terrorist organization or engages in terrorism.

15 Count 2 alleges that during his FBI interviews on  
16 December 3rd and 5th, 2015, Nicholas attempted to obstruct the  
17 fictitious investigation of Mo, the government's own informant,  
18 and the investigation of Mr. Young himself for attempting to  
19 provide material support to ISIS by attempting to mislead the  
20 investigators about their informant's whereabouts.

21 To meet its burden on this charge, the government  
22 must prove beyond a reasonable doubt that Nicholas attempted to  
23 corruptly obstruct an official proceeding. That is a special  
24 term: an official proceeding.

25 And Count 4 alleges that on November 20, 2014,

1 Nicholas attempted to obstruct justice by sending a text to  
2 Mo's cell phone in order to make it appear to the FBI that  
3 their informant Mo had left the country to go to Turkey, when  
4 Nicholas allegedly believed the informant Mo had gone to Syria,  
5 but he didn't actually go to Syria because he was a government  
6 informant.

7 All three charges are attempt crimes. This means  
8 that the government does not allege the charged crime was  
9 committed, and that makes sense because the government has  
10 acknowledged in its case through its witnesses that ISIS  
11 members are not actually involved in this case. That is why  
12 all of the crimes at issue are called "attempt" because it  
13 would have been impossible for Mr. Young to complete the crimes  
14 given the nature of the witnesses involved. There are no ISIS  
15 members involved in this case. There never have been.

16 To prove an attempt crime, the government must prove  
17 beyond a reasonable doubt that Nicholas took some act that was  
18 a substantial step towards the completion of the crime, a  
19 substantial step towards a completion of the crime. That is a  
20 requirement on the government even though ISIS does not exist  
21 in this case. The government has to show he made -- the  
22 defendant made a substantial step towards materially supporting  
23 ISIS and misleading the government about the whereabouts of  
24 their informant Mo.

25 Nicholas raises the defense of entrapment with

1 respect to the material support for terrorism charge, and that  
2 means that even if the government proves beyond a reasonable  
3 doubt that Nicholas sent Google Play gift cards to an  
4 undercover agent who he thought was his friend, knowing that Mo  
5 was notionally but not really in ISIS, Nicholas may still be  
6 acquitted if two conditions are met.

7 First, the jury must find that the government induced  
8 Nicholas to send the gift cards to the undercover agent in July  
9 of 2016. This means not only that it was the government's idea  
10 that the gift cards are sent, but there has to be a plus factor  
11 as well. Friendship alone is not enough. However, friendship  
12 with pleas, additional pleas are considered sufficient to  
13 constitute an inducement.

14 Second, the government must prove beyond a reasonable  
15 doubt that Nicholas had a predisposition to commit the crime,  
16 material support for terrorism, before first being contacted by  
17 government agents. In this case, the first contact with  
18 government agents was Nicholas Young's meeting with the  
19 undercover informant Khalil in 2010.

20 If the jury finds that the government induced the  
21 gift card crime and that the government failed to prove beyond  
22 a reasonable doubt that Nicholas's predisposition to commit the  
23 crime before meeting a government agent, then the jury must  
24 acquit Nicholas of that count, Count 1.

25 The facts established at trial show the government



1 has failed to prove these charges beyond a reasonable doubt and  
2 that Nicholas Young was entrapped. The trial firmly  
3 established that the government induced Nicholas Young to send  
4 the gift cards, and the government has failed to prove beyond a  
5 reasonable doubt that Nicholas had a predisposition to  
6 materially support ISIS before December of 2010.

7 What did we learn at trial? That every step of this  
8 six-year investigation is riddled with reasonable doubt about  
9 Nicholas's predisposition to materially support ISIS.

10 Let's start in the middle. We learned that on  
11 May 22, 2014, Nicholas met the undercover informant Mo at the  
12 Sully Adams mosque. Mo would testify his relationship with  
13 Nicholas lasted between May 22, 2014, and October 25, 2014.

14 Mo testified that he lied to the FBI in April 2014, a  
15 month before he met ISIS -- a month before he met Nicholas.  
16 And right out of the gate, Mo's testimony was off. Mo  
17 testified at first that the first time he recorded one of  
18 Nicholas's meetings -- his meetings with Nicholas was July  
19 2014, at some point in July 2014, but then we played one of his  
20 audio recordings with Nicholas from May 2014. Mo then appeared  
21 to waiver on whether there were earlier recordings with himself  
22 and Nicholas.

23 Special Agent Minichello, John Minichello, Mo's  
24 handler, testified about why these potentially missing  
25 recordings could be a significant issue. Minichello

1 acknowledged that memoranda he drafted as Mo's handler  
2 concerning meetings with Nicholas between May and July of 2014  
3 were likely the first conversations he had -- Mo had with  
4 Nicholas, he wasn't sure, about ICE, the first conversations Mo  
5 had, the informant, with Nicholas about ISIS, but for some  
6 reason, Mo either wasn't recording these meetings or the tapes  
7 are now gone.

8           Mo's credibility took another hit when he testified  
9 that he had never recorded a conversation with a target without  
10 his handler's permission. Special Agent Minichello had  
11 testified right before Mo that Mo made such recordings. Mo  
12 likely perjured himself on the stand.

13           The serious questions concerning these potentially  
14 missing tapes is itself reasonable doubt as to Nicholas's  
15 predisposition to support ISIS. These unrecorded conversations  
16 with Mo allegedly concern the initial conversations between the  
17 defendant and the informant about the subject matter of the  
18 case.

19           Did Nicholas indicate he did not support ISIS in  
20 these conversations? That would have been consistent with  
21 Nicholas's position on May 31, 2014, that the mujahideen  
22 attempting to overthrow the Soviet government in Afghanistan  
23 were criminals. We played that recording for the jury. That  
24 statement appears to be misrepresented in a memorandum that  
25 purports to summarize that conversation on May 31, 2014.

1           And we learned from Mo that he was inducing Nicholas  
2           to attempt to support ISIS continuously in this period. Now,  
3           the government argues that inducement can only happen in the  
4           moments before the crime is committed. That's not the case.  
5           During this period that Mo was hanging out with Nicholas and  
6           courting his friendship, between May 2014 and October 2014, Mo  
7           would ask Nicholas what equipment he should bring to Syria,  
8           whether he should go, what should Mo do with his truck, what  
9           did Nicholas think about ISIS.

10           Mo testified on the stand he would try to exploit  
11           Nicholas's interest in geopolitics to induce Nicholas to  
12           discuss ISIS. That is testimony in this case.

13           Many of Nicholas's responses to Mo's pro-ISIS  
14           comments, as testified by Mo, indicated a lack of  
15           predisposition to support ISIS before the gift cards were sent  
16           in July 2016 and certainly before Mo met Khalil, the undercover  
17           informant, in December 2010.

18           All of these comments constitute reasonable doubt  
19           that Mr. Young had a predisposition to materially support ISIS  
20           before the gift cards were sent in July 2016 and before he met  
21           Khalil in December 2010. This is the predisposition standard  
22           the jury is required to follow by law.

23           On September 11, 2014, it was testified that Young  
24           informed Mo, "I was against ISIS because of all the bad stuff I  
25           was hearing about them."

1           On September 11, 2014, Young told Mo, "I saw  
2   Baghdadi's mug shot on the news, and I was like, oh, they sound  
3   like a bunch of criminals hungry for power and money." This is  
4   reasonable doubt.

5           Nicholas told Mo he wanted to help out Muslims  
6   without doing anything criminal or losing his job. He also  
7   told that to Khalil, both of the undercover agents and  
8   informants in this case. That's reasonable doubt.

9           If -- Nicholas told Mo if he ever heard someone was  
10   going to blow up a subway, he needed his help to stop them.  
11   This is reasonable doubt. Why did Nicholas Young refer to the  
12   subway? Nicholas Young is a police officer in the Metro  
13   Transit subway system. When Mo said he wanted to help out  
14   militant Islam, Nick said, "Why now?" and told Mo, "They have a  
15   good life in America, and Muslims are allowed to pray here  
16   without hassle." That's reasonable doubt.

17           On October 17, 2014, Nicholas told Mo he wanted to  
18   help people stay in the U.S., take care of his parents.  
19   Repeatedly in October 2014, the month that Mo pretended to  
20   leave for Turkey and then possibly Syria, Nicholas told Mo to  
21   follow his conscience repeatedly. Mo testified that during  
22   this period, Nicholas would tell Mo, "Follow your conscience,"  
23   over and over and over. Those are not the words of someone who  
24   is predisposed to materially support ISIS.

25           On October 16, 2014, when Mo said the whole purpose

1 of this booking the Turkey tour was to have a good story,  
2 right, Nicholas said, "Mo, you should actually take the tour,  
3 too."

4 The government doesn't explain that evidence in its  
5 opening statement, which is why several of the counts fail.

6 On the night before Mo leaves, on October 24, 2014,  
7 Nicholas tells Mo to keep his options open. He's indicating to  
8 Mo, "Perhaps you should not go to Syria." Nicholas informs Mo,  
9 "It would be okay if you change your mind. Sometimes we get  
10 stuck in one mindset out of pride." That's October 24, 2014,  
11 the day before Mo goes to Syria.

12 The government's presented evidence that Nicholas  
13 discussed Mo's gear for the trip overseas and talked about Mo  
14 with his trip and potentially going to Syria, but the positive  
15 comments I've just read to you alone prevent the government  
16 from proving beyond a reasonable doubt a predisposition to  
17 materially support terrorism.

18 And Mo also -- let's talk about inducement because  
19 the government is attempting to limit inducement to the moments  
20 before the gift card was sent in July of 2016, but there were  
21 many other facts in this record dealing with inducement.

22 Mo and Nicholas went to the same mosque together.  
23 That's where they met, in a place of religious worship, where  
24 Mo was sent to report on individuals and Nick Young. They went  
25 to the same college. They had the same religious conflict at

1 work. Mo bought Nicholas gifts. Nicholas bought Mo's meals.  
2 Mo testified that he exploited Nicholas's interest in  
3 geopolitics to get Nick talking about ISIS. This is testimony  
4 from Mo in this case.

5 Mo testified that he bonded with Nicholas over  
6 discussions of their girlfriends, Nicholas's deceased father.  
7 Nicholas and Mo shared friends in common, including Hicham  
8 Hall, who Mo testified was very close to Nicholas.

9 So then around in October 2014 to about July 2016,  
10 the government swaps in an agent for Mo, so the informant Mo is  
11 no longer having conversations with Nicholas, but an agent  
12 pretending to be Mo, who is pretending to be Nicholas's friend,  
13 is now talking to Nicholas.

14 So the government repeatedly e-mails Nicholas,  
15 pretending to be Mo from Syria, and the jury learned that in  
16 the first couple of these e-mails, for a couple of months,  
17 Nicholas didn't even respond.

18 In May 2016, an agent, Agent Sikorski, pretending to  
19 be Mo, raises the idea of communicating on a secure app and  
20 through the purchase of Google gift cards via e-mail to  
21 Nicholas. Nicholas doesn't respond to that e-mail for a month.

22 In July 2016, Agent Sikorski pretending to be Mo asks  
23 Nick for gift cards on Threema. Nick doesn't send them in  
24 response to that first text. Then the agent asks again a  
25 second time before getting them, but inducement didn't start on

1 Threema. It started when Mo cultivated Nick's friendship  
2 between May and October of 2014. So that's inducement.

3 The government's burden at trial was to prove beyond  
4 a reasonable doubt that Nicholas Young had a predisposition to  
5 materially support ISIS before December 2010, and that's  
6 because Khalil, the undercover agent, testified to you that's  
7 when he first met Nicholas at a wedding.

8 Khalil told you he had a pretty good friendship with  
9 Nicholas, implying that he might have been friends with him  
10 even apart from his role as an undercover agent, but let's talk  
11 about what the crime is here that the government has to prove  
12 Nicholas had the predisposition to commit before December of  
13 2010. This isn't apparent in the government's argument.

14 The crime here is not possessing literature. I don't  
15 know what percentage of the government's case consisted of  
16 dirty literature and pictures, but that's not the crime here.  
17 The crime here is materially supporting ISIS, giving money or  
18 other aid, material aid to the terrorist group.

19 The government cannot satisfy its burden in this case  
20 that Nicholas Young had a predisposition to materially support  
21 ISIS before December 2010 by showing you a bunch of pictures.  
22 The pictures do not go one step further and show that the  
23 defendant would be willing to open his pocket and provide money  
24 to a terrorist organization. The government has shown no  
25 evidence that Nicholas Young has a predisposition to give money

1 to ISIS.

2 So what has the government shown you? In a material  
3 support for terrorism case in 2017, the government has  
4 introduced Nazi pictures and anti-Semitic pictures from  
5 Mr. Young's computer. This is a complete travesty. White  
6 supremacist memorabilia does not prove beyond a reasonable  
7 doubt that Nicholas would materially support militant Islamic  
8 terrorism.

9 The theory doesn't make sense. And, ladies and  
10 gentlemen, the theory is being offered to satisfy the  
11 government's burden in this case. It has to prove Mr. Young  
12 had a predisposition to support ISIS before December 2010, so  
13 the government made its theory fit the facts, but it did so in  
14 a way that is particularly inappropriate.

15 White supremacists by definition do not support  
16 non-whites, and most Muslims are not white. The government's  
17 expert, Gartenstein-Ross, testified on this subject, but  
18 Gartenstein-Ross has no credibility on this issue.

19 Gartenstein-Ross has never published in a  
20 peer-reviewed publication on the subject of his thesis of this  
21 connection between white supremacism and militant Islam. He's  
22 written a couple arguments about this subject in popular press,  
23 and this thesis was likely concocted in order to establish the  
24 government's case here. Gartenstein-Ross's thesis is based on  
25 eight case studies. This is not science.



1           The case agent today testified that Mr. Young has not  
2       been investigated for hate crimes on the basis of these  
3       materials. And besides, the government has not proven that  
4       Nicholas's interest in these materials was political rather  
5       than dress-up, reenactment. Gartenstein-Ross told you that if  
6       his eight case studies were, involved people who were not  
7       politically supporting Nazism but were dressing up, his thesis  
8       might have changed.

9           Officer Ian Campbell testified about a project for a  
10      European racism class that Mr. Young was in. Officer Campbell  
11      testified that for a class at George Mason University, Nicholas  
12      went to what he described as a British National Party meeting.  
13      This is not serious evidence.

14          Officer McNulty testified that he was shocked by the  
15      charges against Nick. He couldn't have imagined that Nick  
16      would be in this position. Nick supported American troops.  
17      Nick wasn't racist towards friends or girlfriends. This is all  
18      reasonable doubt.

19          A second subject of the government's predisposition  
20      evidence are the *Inspire* magazines. You'll notice that at  
21      trial, we didn't object to the relevance of these magazines  
22      because this is a material support for terrorism case.

23          ISIS *Inspire* magazines are relevant evidence, unlike  
24      the Nazi evidence, but just because the evidence is relevant  
25      doesn't mean the government has proven beyond a reasonable

1 doubt that the fact that this information was found on Nicholas  
2 Young's computer proves beyond a reasonable doubt that he would  
3 materially support ISIS.

4 A great deal of these pictures, these Nazi pictures  
5 and white supremacist pictures that were shown during trial  
6 were all downloaded on the same day, December 7, 2007, not  
7 spread out over time, but the presentation for the jury at  
8 trial showed picture after picture after picture after picture,  
9 sometimes consuming hours of trial testimony. That created a  
10 misleading impression with the jury. The misleading impression  
11 was that Mr. Young might have been downloading these materials  
12 continuously over the course of the six-year investigation.

13 It's not a crime in this country to own radical  
14 literature, and owning radical literature doesn't get the  
15 government there.

16 Let me give you an example. If I own a subscription  
17 to a magazine, for example, the *National Geographic* magazine,  
18 the government -- and the government raids my house and finds  
19 the *National Geographic* magazine, the government may be able to  
20 use that evidence to prove beyond a reasonable doubt that I  
21 have an interest in wildlife.

22 What the government cannot do with that *National*  
23 *Geographic* magazine after it raids my house is prove that I  
24 have beyond a reasonable doubt, I have a predisposition to give  
25 money to animals in Africa. It cannot do that. Owning

1 literature does not prove beyond a reasonable doubt that  
2 someone will give money and open their pockets to that cause.  
3 The government has given you none of that evidence, none, zero.

4 Let's turn to Libya. Libya is a big piece of the  
5 government's predisposition case because the government is  
6 arguing repeatedly that Nicholas Young traveled to Libya with  
7 the intention of joining a terrorist group, the Abu Salim  
8 Martyrs Brigade.

9 It troubles me to say this, but these are  
10 misrepresentations. There is no evidence in this case to  
11 indicate that when Mr. Young traveled to Libya in May 2011, it  
12 was his intent on traveling there to join something called the  
13 Abu Salim Martyrs Brigade. There's no evidence of that in this  
14 case. There are e-mails that follow his trip there.

15 But the government would later learn that Nicholas  
16 did not break the law in traveling to Libya, that he acquired  
17 the proper forms for bringing body armor there, that he told  
18 government agents that he went there and had body armor.

19 We've shown you the pictures of Nicholas Young's trip  
20 to Libya. There are pictures of families on the beach. At the  
21 same time that this evidence exists, the government is trying  
22 to argue to you that it can prove beyond a reasonable doubt  
23 that Mr. Young had a predisposition to support ISIS because he  
24 was with the Abu Salim Martyrs Brigade in Libya. We've shown  
25 you pictures of the trip to Libya. That is reasonable doubt

1 alone.

2 Now, let's turn to the government's -- actually,  
3 let's go back to Libya. There's one more important piece.  
4 This was a piece of the government's evidence.

5 The government testified, one of the case agents  
6 testified that an individual Nicholas met in Libya, Mohammad,  
7 had once asked Nicholas to send night vision scopes to Libya.  
8 It wasn't explained what they were for in the e-mails.

9 Nicholas Young responded, "No. I will not do that  
10 because that is illegal."

11 Now, the case agent testified that he believed that  
12 he probably didn't send those gift cards because he didn't want  
13 to get caught.

14 Why Mr. Young wants to follow the law is not the  
15 issue. The issue is whether he has a predisposition to follow  
16 the law, and this e-mail exchange is another piece of  
17 reasonable doubt. And in fact, it's closer than any other  
18 piece of evidence in this case to what the underlying crime is.  
19 The underlying crime is an attempt to materially support ISIS.

20 What this evidence shows is that when someone from a  
21 foreign country, Libya, where the government alleges Abu Salim  
22 Martyrs Brigade was running wild, sent an e-mail to Nicholas to  
23 ask for night vision scopes, Nicholas said in writing, "No,  
24 because that's illegal." This by itself is reasonable doubt as  
25 to Young's predisposition to materially support ISIS.

1           And furthermore, this individual Mo, he wasn't an  
2 informant. This was the real world.

3           Let's discuss the dangerous associations that the  
4 government has been trying to spin in this case. The  
5 government has presented what looked like mug shots on the TVs.  
6 They're actually driver's license photos.

7           One of the government's witnesses testified about Zac  
8 Chesser. Government witnesses in this case have acknowledged  
9 that Nick was not known to have met Chesser on that many  
10 occasions. Chesser was not known to be an acquaintance of  
11 Nicholas Young's, a close friend.

12           The government has thrown up pictures of T.J. Singh.  
13 T.J. Singh was never arrested. The government has shown  
14 pictures of Hicham Hall, a mug shot-looking picture. This  
15 individual was never arrested, either, and this is Mr. Young's  
16 friend. So the scary-looking photos certainly look like  
17 they've been arrested.

18           Liban Mohamed, this was another individual who is  
19 planning to attack, an act of terrorism. The UCE Khalil  
20 testified that Nicholas had nothing to do with Mohamed's plots.  
21 Why are all of these photos being shown to the jury? What are  
22 these associations? What is the government trying to imply?  
23 These people were never arrested.

24           There are contradictions in the government's case,  
25 the very structure of the investigation that suggests there can

1 be no predisposition to materially support terrorism before the  
2 gift cards were sent in 2016. The government acknowledges that  
3 after Mr. Young returned from Libya, there may have been an  
4 attempt to recruit him as an undercover informant. We don't  
5 know whether that was a ruse or not, but it's possible that it  
6 was an attempt to recruit him as an undercover informant.

7 And yet at the exact same time period, the government  
8 is attempting to allege he had no -- he had a predisposition to  
9 materially support terrorism. So which is it? Was he ripe  
10 material to be an informant for the FBI at the same time that  
11 he had a material support for terrorism?

12 Here's another contradiction: The government is  
13 suggesting to you that Mr. Young had a predisposition to  
14 support terrorism between 2010, when the investigation into him  
15 began, and 2016, and yet during this whole period, he remained  
16 as a police officer on the force.

17 You have seen no evidence indicating that Mr. Young  
18 ever performed inadequately on the job, was ever racist towards  
19 any individuals he met on the job. In fact, the government has  
20 stipulated he received a commendation from the D.C. U.S.  
21 Attorney's Office.

22 MR. KROMBERG: Objection, Judge. That is not in  
23 evidence.

24 THE COURT: All right, if it's not in evidence, the  
25 jury has to disregard that statement.

1 MR. SMITH: If Mr. Young had a predisposition to  
2 materially support terrorism between 2010 and 2016, what was he  
3 doing on the force with a gun every day? Why was he never  
4 fired? Why have you seen none of his colleagues from the WMATA  
5 here today? Where are they?

6 Now, each one of those facts could establish a  
7 reasonable doubt. All of them together establish that the  
8 government has not proven beyond a reasonable doubt Nicholas  
9 Young had a predisposition to materially support terrorism  
10 before July 2016, but the government's burden is December 2010.

11 If the jury reviews the evidence that has been  
12 submitted for the period before December 2010, it's just a  
13 bunch of Web site clicks. The witness Menzies testified that  
14 Nicholas Young -- he remembers Nicholas Young making some  
15 comment years and years and years ago.

16 Count 2 in this case alleges that Nicholas Young  
17 attempted to mislead Agents Caslen and Smith on December 3,  
18 2015, and December 5, 2015, about the whereabouts of Mo and his  
19 purpose in traveling to Turkey, but you heard from Agents  
20 Caslen and Smith that there was no criminal investigation into  
21 Mo because Mo was an informant. There was no grand jury  
22 investigation into Mo. That only leaves an investigation into  
23 Mr. Young himself.

24 But Agent Smith testified that nobody told  
25 Mr. Young during these two interviews on December 3, 2015, and

1 December 5, 2015, that Mr. Young was under investigation. In  
2 fact, you'll recall the testimony was these questions that the  
3 agents asked Mr. Young during these interviews were about  
4 Peshwaz Waise and their own informant, Mo. Mr. Young was never  
5 told he was under investigation in that meeting.

6 The government's burden in this case is to show  
7 beyond a reasonable doubt for this count that Mr. Young  
8 knowingly obstructed justice. So on the one hand, the  
9 government's agents have acknowledged that there is no  
10 investigation into Mo, so that can't be obstructed, but the  
11 government on the other hand has said that Mr. Young was never  
12 informed he was under investigation in this meeting.

13 Now, the case agent testified today about some of the  
14 evidence that might show Mr. Young knew he was under  
15 investigation when he was interviewed on December 3, 2015, and  
16 December 5, 2015, but the evidence you heard was that in 2011,  
17 Mr. Young was security conscious, and he might have told the  
18 UCE Khalil that he thought he was under investigation. That's  
19 not reasonable doubt. That's not beyond a reasonable doubt.  
20 That the defendant made a statement about possibly being under  
21 investigation four years before the meeting?

22 The government has failed to meet its burden for  
23 Count 2 because it has not proven beyond a reasonable doubt  
24 that Mr. Young knowingly obstructed any official proceeding.

25 On Count 4, the government alleges that Young



1 obstructed justice by sending a text message to pretend to  
2 Mo -- to pretend Mo, he sent a text message to pretend Mo on  
3 November 20, 2014, that was designed to mislead the FBI about  
4 Mo's whereabouts.

5           So again, let's step back. The charge is that -- not  
6 that Mr. Young misled the FBI. That would have been impossible  
7 because Mo was an agent -- was an informant of the FBI.  
8 They're alleging that he attempted to, not that he actually  
9 could mislead the FBI in any real way.

10           But even if we grant the government's fictitious  
11 theory of an obstruction of justice charge based on their own  
12 informant, the facts don't satisfy the case. The facts don't  
13 satisfy the charge here.

14           This text was sent on November 20, 2014, but the jury  
15 heard testimony at the trial that in the days before Mo left,  
16 Nicholas Young was repeatedly making inconsistent statements to  
17 Mo about whether he knew he would actually be going on to Syria  
18 from Turkey or not.

19           You heard testimony that Nicholas told Mo -- Mo said  
20 to him, "This whole story about Turkey is a front, right?"

21           And Nicholas said, "Actually, I think you should go  
22 to Turkey, too."

23           And then on October 24, 2014, the night before Mo  
24 goes to Turkey, Nick says, "You know, maybe you'll change your  
25 mind. Maybe you'll take a trip to Turkey and come back."

1           The government has shown you no evidence that between  
2 that date and November 20, 2014, Nicholas Young knew to a  
3 certainty that Mo would not be coming back from Turkey. Of  
4 course, he never went to Turkey, but hypothetically. He did go  
5 to Turkey for a day to take pictures with the agent.

6           So Nicholas said, "I think you actually should take  
7 the trip to Turkey."

8           So the government's theory in Count 4 is that  
9 Nicholas intended to obstruct justice by misleading the FBI  
10 about whether Mo would go on to Syria. When this text message  
11 was sent, the government has not shown beyond a reasonable  
12 doubt that Mr. Young knew he would go on to Syria.

13           The government has made a lot of statements about  
14 Mr. Young's character and personality that have nothing to do  
15 with the elements of the charges in this case. The  
16 government's prosecutor said, after reeling off a list of Nazi  
17 evidence and anti-Semitism, of which I know something myself,  
18 but perhaps I know not as much as the government's prosecutor,  
19 that Mr. Young was -- this is who he is. This is who he is.

20           I think the government is revealing more than it  
21 knows when it makes that statement because in this country,  
22 we're not prosecuted for being who we are. In this country,  
23 we're not prosecuted for owning literature. We're not  
24 prosecuted even if we have repellant views. But this is  
25 nothing new. This was established in this country decades and

1 decades ago. The government's attorneys in this case haven't  
2 caught up.

3 Ladies and gentlemen, these are the facts of the  
4 case. We respectfully request that you review the recordings  
5 we have provided to you. They're on a disc marked Defense  
6 Exhibit 1. They constitute all of the recordings we tried to  
7 play in trial but could not. They're easily accessible.  
8 They'll back up some of the statements we've made in this  
9 closing argument with recordings between the informant Mo and  
10 Nicholas.

11 We respectfully request that you review them.  
12 They're very short. It's about five to ten minutes over the  
13 course of five days, maybe ten to fifteen minutes.

14 So we respectfully request that you carefully review  
15 and dispassionately consider the evidence and find Nick not  
16 guilty of all three charges. Thank you.

17 THE COURT: All right. Mr. Kromberg?

18 REBUTTAL ARGUMENT

19 BY MR. KROMBERG:

20 Thank you, Your Honor.

21 Good afternoon, ladies and gentlemen. So here we  
22 are. I get to speak to you again. When I was speaking to you  
23 during the opening statement, I laid out what we would prove.  
24 I think that you'll see that what we did was what we said we'd  
25 do.

1           And apparently, there's now no dispute that Nicholas  
2 Young knew that he -- or believed that he was sending money to  
3 ISIS to help ISIS bring fighters to fight for ISIS. That's  
4 what he did, and that's what he's now not contesting that he  
5 knew that's what he was doing. He was sending money to ISIS to  
6 help ISIS bring more fighters to ISIS.

7           Okay. That part is settled. He did that. Put  
8 that -- you don't have to spend any time in the jury room on  
9 whether he did it or not. That's now settled. He did it.

10           When Mo -- fake Mo sent the text message to Nicholas  
11 Young saying, "Thanks," Nicholas Young wrote back talking about  
12 ISIS, talking about fighting, saying that I'd like to buy a  
13 slave girl. I hope that a bunch of Alawite women are going to  
14 fall -- I gather that a bunch of Alawite women are going to  
15 fall into the hands of the mujahideen.

16           And then he goes on to talk about this woman that he  
17 met who doesn't believe in jihad the way that he does, and  
18 you'll go and read that text message, the last text message, he  
19 says, "Yeah, she believes in jihad of the pen, the internal  
20 jihad, the struggles we put upon ourselves, all that stuff that  
21 there's no evidence for."

22           What the judge is going to instruct you is that you  
23 can measure someone's predisposition even from how they act  
24 now. Someone who acts that way now, you can use that to think  
25 what was his predisposition before.

1           What was it that you heard that Mo or Khalil said  
2           that would induce a police officer in Washington, D.C., to say,  
3           "I want to buy a slave"? Or that jihad, internal jihad stuff,  
4           there's no evidence for that. Internal struggle, that's a  
5           bunch of baloney. The real jihad is fighting.

6           Did Khalil or Mo tell him to do that? Did Khalil or  
7           Mo induce him to that?

8           Can we -- could I have the clicker from the  
9           PowerPoint? Thank you.

10          So when you look back at this -- okay. We'll start  
11          there. So you can see that this Nicholas Young in the center  
12          and the driver's license photo of Saleh Al-Barmawi and the  
13          driver's license photo of Amine El Khalifi, Khalifi is the guy  
14          who wore the suicide vest trying to get to the U.S. Capitol.  
15          Saleh Al-Barmawi is the guy that you heard from Khalil and  
16          Menzies, Brian Menzies, that Barmawi is the guy that says Anwar  
17          Awlaki is the man. Muhammad Maqdisi is the man. Those are the  
18          guys you should follow. Khalil didn't come into this picture  
19          yet.

20          And then the Chesser. So Chesser was there first,  
21          and then -- excuse me, Al-Barmawi is there first with  
22          Mr. Young, and then Chesser is there, and then El Khalifi is  
23          there, and Liban Mohamed is there. That's the circle he was  
24          traveling in.

25          Do you think -- do you think it's Khalil that caused

1 him to have the beliefs that he had? Or maybe it was Zachary  
2 Chesser and Saleh Al-Barmawi and Liban Mohamed and Amine El  
3 Khalifi? Or, hey, we can go to the guys from 2014, but I don't  
4 have them on my PowerPoint.

5 See -- oh, there we go, a circle.

6 So the guys in 2014 that Mo is telling you about,  
7 there was Tejpal Singh and Peshwaz Waise. Peshwaz was the guy  
8 who got arrested in Texas who you heard about, and he was the  
9 guy that Mo was trying to get on the recording in the first  
10 place. That was the original target.

11 And then there's Hicham Hall, and you heard a clip  
12 and saw a transcript for that time that Hicham Hall was saying,  
13 "Hey, Mo, you should not go join ISIS. Absolutely not. You  
14 should not go join ISIS. You should go to Afghanistan and  
15 fight against Americans in Afghanistan."

16 That's the crowd, that's the circle that Mr. Young  
17 was traveling in.

18 Now, you also heard, I think the defense brought out  
19 on cross-examination of Mo that Hicham Hall was -- told Mo that  
20 if I hear you're going to ISIS and if I ever see you, I'm going  
21 to physically harm you. Good for Hicham Hall.

22 What about Police Officer Young? Police Officer  
23 Young didn't quite react that way, did he? Police Officer  
24 Young said, "Hey, you want a ride to the airport?"

25 Defense talks about that text message that Officer

1 Young sent in November 2014, that they're not proof of what  
2 Officer Young knew at that time. You don't have to think about  
3 it. We know why he sent the message. You heard the tape, the  
4 recording. You saw the transcript.

5 And as I explained in the opening statement, Officer  
6 Young tells Mo, "Hey, Mo, a couple of weeks after you leave,  
7 I'm going to send you a text message. Don't respond."

8 Mo says, "Don't respond?"

9 Officer Young says, "Don't respond. The FBI is going  
10 to come looking for you, and they're going to be -- once they  
11 find out you're gone, they're going to be investigating the  
12 people who are in contact with you. That would be me --  
13 actually, this is Officer Young thinking, That would be me.

14 So he says, "I'm going to send you this text message  
15 to make it look like I don't know that you're really going to  
16 try and join ISIS.

17 Okay. That's the proof. So what inference can you  
18 draw from that? The defense would have you draw the inference  
19 that that text message was, was sent maybe for some other  
20 reason. Well, maybe, maybe Officer Young really wanted to get  
21 together with Mo for lunch.

22 You don't need to draw that inference. You have what  
23 Officer Young said. Officer Young said, "I'm sending you that  
24 so when the FBI comes and investigates and they look to see if  
25 I" -- Officer Young -- "knew you were going, it's going to make

1 me look like I didn't know that you were going."

2 Okay. What's the next inference you can draw from  
3 that? Perhaps that Officer Young expected there would be an  
4 investigation into Officer Young's own conduct? That's why  
5 Officer Young wanted it to look good for Officer Young.

6 And if Officer Young expected there would be an  
7 investigation into his own conduct, what would Officer Young, a  
8 police officer for 13 years, think would be involved in the  
9 investigation? Perhaps a grand jury? I mean, he is after all  
10 a cop for 13 years. Presumably cops know that people who get  
11 arrested and charged are indicted by a grand jury sometimes.

12 So what, what the defense didn't mention, what the  
13 judge is going to say is that -- is going to instruct you, I  
14 predict, is that the existence of the grand jury investigation  
15 did not have to be known to the defendant. It had to be  
16 foreseeable to him.

17 You think that an officer with 13 years of  
18 experience, it might be foreseeable to him that a grand jury  
19 might be involved in the investigation, when he knows, he's  
20 expecting the investigation to happen?

21 Defense just mentioned that, oh, he was -- he  
22 performed his job adequately. See, defense is hoping that you  
23 don't remember the evidence enough putting the pieces together.

24 When Khalil testified, Khalil said, "Yeah, there was  
25 that time that Officer Young told me he had been stopped for a



1 traffic violation, and Officer Young said to Khalil, 'I didn't  
2 tell the cop that I was a cop myself and maybe try to get out  
3 of the ticket because I was afraid that he would call my  
4 department, and that would be bad because I had already called  
5 in saying I was on duty when I wasn't.'"

6 And you heard from, from Joanne Dill, the retired  
7 Metro officer, said the officers were on their honor to, to be  
8 on patrol where they were supposed to be on patrol and that  
9 Officer Young apparently called in to say, "Yeah, I got that  
10 covered. I'm at the Metro station. If anything happens, I'm  
11 there."

12 Well, that's what we know about how Officer Young  
13 conducted his job as a police officer: calling in to say he's  
14 on the job when he wasn't.

15 There is -- there are gobs of evidence of  
16 predisposition to support terrorism before 2010.

17 Could you bring up 14-119?

18 So defense doesn't -- says that Nazi stuff, that's  
19 just the government trying to smear the guy. Well, who are you  
20 going to believe, the defense or your own eyes?

21 You heard Ian Campbell say walking out of the  
22 neo-Nazi rally -- or, excuse me, meeting, "Hey, don't discount  
23 the idea of an alliance with the Muslims to combat the Jews."

24 Well, the defense says it's impossible. How could a  
25 neo-Nazi support Islamists?

1 Well, okay. There's 14-119, and the metadata on that  
2 picture is from 2006. That was four years before the defendant  
3 met Khalil.

4 And then we have -- 10-203, please?

5 10-203, which will pop up on your screen in a moment,  
6 was a terrorism manual. You heard Daveed Gartenstein-Ross talk  
7 about that. That was downloaded onto his, you know,  
8 Mr. Young's computer in 2007, three years before he met Khalil.

9 And how about Government Exhibit 14-100, the *Book of*  
10 *Jihad*? You heard about that from Daveed Gartenstein-Ross.  
11 That was downloaded in November 2010. That was only a month  
12 and a half before he met Khalil.

13 Then you have all the *Inspire* magazines which we went  
14 through. You probably don't want me to show them to you again.  
15 They were all before he met Khalil. Make a bomb in the kitchen  
16 of your mom; the ultimate mowing machine: Drive your car and  
17 knock people down; how to use encrypted communications. All  
18 that stuff on his computer and in hard copy, one issue in hard  
19 copy, all before he ever met Khalil.

20 So don't let the smoke screen fool you about whether  
21 there's a relationship between Nazi terrorism and Islamic  
22 terrorism.

23 But -- can I have 10-701?

24 THE COURT: You've got five minutes left.

25 MR. KROMBERG: Thank you, Your Honor.

1           Mr. Young knew that the SS, the Nazi SS was Hitler's  
2 instrument of terror, that's his book, and yet he has a tattoo  
3 of an SS guy. He has a license plate of the FRI KRP. He has  
4 the prayer list where the people he's praying for include his  
5 family, it's a wonderful thing, and his friends, and those  
6 great political leaders of the 20th and 21st Century: Hitler,  
7 Mussolini and Sadam and the Mufti of Jerusalem.

8           When Mr. Gibbs was speaking, you saw the Alliance  
9 poster. Now, that looked like a World War II vintage poster,  
10 and yet it said 1939 to 2004, the Alliance Between Islamists  
11 and Nazis. That wasn't a World War II thing. That was a 2004  
12 thing, six years before he met Khalil.

13           And 4-203, "Finish what Hitler Started," had that on  
14 his phone for a couple of years before the phone was seized.

15           Could we have 10-863?

16           Let's talk about music. Okay. You're going to --  
17 that's a picture, but you're going to have the actual document  
18 before you in the jury room. That's the white power music,  
19 your source for white power music. Well, it is -- in case the  
20 music really changed, let's go to 10-303.

21           Jihad nasheeds. You heard what nasheeds are.  
22 Nasheeds are songs. As Mr. Gibbs said, this is who he was, and  
23 this is who he is. He yearned to be a terrorist.

24           Nobody convinced him. It certainly wasn't Khalil or  
25 Mo. Go back and think, what was it that Khalil or Mo did that

1 convinced Nicholas Young to be a terrorist or to want to  
2 support terrorists? No, this is who he was.

3 Go to 3-302, please.

4 That's the photo from 12/27/15. So that's, that's  
5 years after he met, he met Khalil.

6 Okay. Let's go back a couple years. How about  
7 8-103? That's his Facebook profile picture. He takes the  
8 picture of a jihadi from overseas and makes that his Facebook  
9 profile picture. What more do you have to have in order to  
10 determine that this is what he wanted to be, if he could only  
11 have the opportunity where he wouldn't get caught?

12 Ladies and gentlemen, think back on what Khalil said.  
13 He wanted to attack the FBI. He said peaceful protest was  
14 useless. You have to take things by force. If you were  
15 attacking a federal building, you couldn't do it with one  
16 person, but if you had multiple people, it would be different.  
17 He had body armor to outfit a team.

18 What more do you need to -- well, when he's -- now --  
19 we now know he did it. He sent the money to bring the ISIS  
20 fighters over to help ISIS. What more do you need?

21 I guess my final point is that the defense says,  
22 well, but he was equivocal.

23 Could we have 16-106, please?

24 That's his oath of office. He was equivocal.

25 And he told Mo sometime in 2014 that, you know, maybe

1 it's not a great thing to do.

2 Okay. Dr. Gartenstein-Ross said, explained that the  
3 attraction of ISIS varied depending on ISIS's success because  
4 the more ISIS succeeded, the more it appeared they really were  
5 the actual Caliphate.

6 So the fact that Young was equivocal in 2014 really  
7 doesn't have anything to do with what he believed in 2016, when  
8 ISIS was in a much different position. Hicham Hall would have  
9 hit Mo for trying to join ISIS.

10 THE COURT: Mr. Kromberg, your time is up.

11 MR. KROMBERG: Officer Young helped.

12 Thank you, ladies and gentlemen.

13 THE COURT: All right, we're going to take a  
14 five-minute recess to reset the courtroom because people cannot  
15 come and go when we're instructing the jury.

16 When you-all come back in, folks, the people I can't  
17 see, if you'll now all sit down towards the far end, the other  
18 end? Because I like to be able to watch your faces while I'm  
19 giving the instructions, all right?

20 We'll take a five-minute recess.

21 (Recess from 4:04 p.m., until 4:16 p.m.)

22 THE COURT: All right, ladies and gentlemen, now that  
23 you have heard all of the evidence that is to be received in  
24 this trial and each of the arguments of counsel, it becomes my  
25 duty to give you the final instructions of the Court as to the

1 law that is applicable to this case. You should use these  
2 instructions to guide you in your deliberations.

3 All of the instructions of law given to you by the  
4 Court, that is, those given to you at the beginning of the  
5 trial, during the course of the trial, and now in these final  
6 instructions, must guide and govern your deliberations.

7 It is your duty as jurors to follow the law as stated  
8 in all of the instructions of the Court and to apply these  
9 rules of law to the facts as you find them to be from the  
10 evidence received during the trial.

11 Counsel have quite properly referred to some of the  
12 applicable rules of law to you in their closing arguments. If,  
13 however, any difference appears to you between the law as  
14 stated by counsel and that as stated by the Court in these  
15 instructions, you, of course, are to be governed by the  
16 instructions given to you by the Court. You are not to single  
17 out any one instruction alone as stating the law but must  
18 consider all of the instructions as a whole in reaching your  
19 decisions.

20 Neither are you to be concerned with the wisdom of  
21 any rule of law stated by the Court. Regardless of any opinion  
22 you may have as to what the law ought to be, it would be a  
23 violation of your sworn duty to base any part of your verdict  
24 upon any other view or opinion of the law than that being given  
25 to you in these instructions, just as it would be a violation

1 of your sworn duty as judges of the facts to base your verdict  
2 upon anything but the evidence received in this case.

3           You were chosen as jurors for this trial in order to  
4 evaluate all of the evidence received and to decide each of the  
5 factual questions presented by the allegations brought by the  
6 government in the indictment and the not guilty plea of the  
7 defendant. In resolving the issues presented to you for  
8 decision in this trial, you must not be persuaded by bias,  
9 prejudice, or sympathy for or against any of the parties to  
10 this case or by any public opinion.

11           Justice through trial by jury depends upon the  
12 willingness of each individual juror to seek the truth from the  
13 same evidence presented to all the jurors here in the courtroom  
14 and then to arrive at a verdict by applying the same rules of  
15 law as are now being given to each of you in these  
16 instructions.

17           Now, during this trial, I permitted you to take  
18 notes, and I believe several of you did, and many courts do not  
19 permit note-taking by jurors, so a word of caution is in order.  
20 There is always a tendency to place undue importance to matters  
21 which one has written down. Some testimony which is considered  
22 unimportant at the time presented and thus not written down may  
23 take on greater importance later in the trial in light of all  
24 of the evidence presented.

25           Therefore, you are instructed that your notes are

1 only a tool to aid your own individual memory, and you should  
2 not compare your notes with other jurors in determining the  
3 content of any testimony or in evaluating the importance of any  
4 evidence. Your notes are not evidence and are by no means a  
5 complete outline of the proceedings or a list of the highlights  
6 of the trial. Above all, it is your memory which should be the  
7 greatest asset when it comes time to deliberate and render a  
8 decision in this case.

9           Moreover, I want to remind you that you are coequal  
10 judges of the facts, and each juror's memory of and opinion  
11 about the evidence is worthy of consideration by all the other  
12 jurors. That a juror may have taken extensive notes does not  
13 mean that his or her memory or opinion is worthy of more  
14 consideration than that memory or opinion of any juror who took  
15 few notes or none at all.

16           Now, there is nothing particularly different in the  
17 way that a juror should consider the evidence in a trial from  
18 that in which any reasonable and careful person would deal with  
19 any very important question that must be resolved by examining  
20 facts, opinions, and evidence. You are expected to use your  
21 good sense in considering and evaluating the evidence in the  
22 case. Use the evidence only for those purposes for which it  
23 has been received, and give the evidence a reasonable and fair  
24 construction in the light of your common knowledge of the  
25 natural tendencies and inclinations of human beings.



1           If the defendant be proved guilty beyond a reasonable  
2 doubt, say so. If not proved guilty beyond a reasonable doubt,  
3 say so.

4           Keep constantly in mind that it would be a violation  
5 of your sworn duty to base a verdict upon anything other than  
6 the evidence received in the case and the instructions of the  
7 Court. Remember as well that the law never imposes upon the  
8 defendant in a criminal case the burden or duty of calling any  
9 witnesses or producing any evidence because the burden of  
10 proving guilt beyond a reasonable doubt is always with the  
11 government.

12           Now, the evidence in this case consists of the sworn  
13 testimony of the witnesses, regardless of who may have called  
14 them, all exhibits received in evidence, regardless of who may  
15 have produced them, and all facts which may have been agreed to  
16 or stipulated to or judicially noticed.

17           Now, when the attorneys on both sides stipulate or  
18 agree as to the existence of a fact, you may accept the  
19 stipulation as evidence and regard that fact as proved. You  
20 are not required to do so, however, since you are the sole  
21 judges of the facts.

22           Any proposed testimony or proposed exhibit to which  
23 an objection was sustained by the Court and any testimony or  
24 exhibit ordered stricken by the Court must be entirely  
25 disregarded by you. Anything you may have seen or heard

1 outside the courtroom is not evidence and must be entirely  
2 disregarded.

3 The questions, objections, statements, and arguments  
4 of counsel are not evidence in the case unless made as an  
5 admission or stipulation of fact.

6 Now, you are to base your verdict only on the  
7 evidence received in the case. However, in your consideration  
8 of the evidence received, you are not limited to the bald  
9 statements of the witnesses or to the bald assertions in the  
10 exhibits. In other words, you are not limited solely to what  
11 you see and hear as the witness testifies or as the exhibits  
12 are admitted. Instead, you are permitted to draw from the  
13 facts which you find have been proved such reasonable  
14 inferences as you feel are justified in the light of your  
15 experience and common sense.

16 Inferences are simply deductions or conclusions which  
17 reason and common sense lead the jury to draw from the evidence  
18 received in the case.

19 If any reference by the Court or by counsel to  
20 matters of testimony or exhibits does not coincide with your  
21 own recollection of that evidence, it is your recollection  
22 which should control during your deliberations and not the  
23 statements of the Court or of counsel.

24 Testimony or an exhibit can be admitted into evidence  
25 during a trial only if it meets certain criteria or standards.

1 It is the sworn duty of the attorney on each side of a case to  
2 object when the other side offers testimony or an exhibit which  
3 that attorney believes is not properly admissible under the  
4 rules of law. Only by raising an objection can a lawyer  
5 request and then obtain a ruling from the Court on the  
6 admissibility of the evidence being offered by the other side.  
7 You should not be influenced against any attorney or his or her  
8 client because the attorney has made an objection.

9 Moreover, do not attempt to interpret my rulings on  
10 objections as somehow indicating how I think you should decide  
11 the case. I am simply making a ruling on a legal question  
12 regarding the particular piece of testimony or exhibit.

13 It is the duty of the Court to admonish an  
14 attorney -- and I think in this case, I did it to both sides --  
15 who out of zeal for his or her cause does something which I  
16 feel is not in keeping with the rules of evidence or procedure.  
17 You are to draw absolutely no inference against the side to  
18 whom an admonition of the Court may have been addressed during  
19 the trial of this case.

20 And during the course of the trial, I occasionally  
21 asked questions of a witness. Do not assume that I hold any  
22 opinion on the matters to which my questions may have related.  
23 The Court may ask a question simply to clarify a matter, not to  
24 help one side of the case or to hurt the other.

25 Now, there are two types of evidence which are

1 generally presented during a trial, and these are called direct  
2 evidence and circumstantial evidence. Direct evidence is the  
3 testimony of a person who asserts or claims to have actual  
4 knowledge of a fact, such as an eyewitness. Circumstantial  
5 evidence is proof of a chain of facts and circumstances  
6 indicating the existence of a fact.

7           And let me give you an example of circumstantial  
8 evidence. You leave your home at noon on a cold February day.  
9 At that time, your front yard is bare. It starts to snow, you  
10 return at 5 p.m., and you see a footprint in the snow that now  
11 covers your yard.

12           From the facts I've just given you, that is, the fact  
13 that you left your home at noon, returned at 5 p.m., you see  
14 the footprint, and you know from common experience that human  
15 beings normally are associated with footprints, you can infer  
16 that there was a person in your yard sometime between noon and  
17 5 p.m. If you had actually seen a person, that would be direct  
18 evidence of that fact.

19           Now, the law makes no distinction between the weight  
20 or value to be given to either direct or circumstantial  
21 evidence. Nor is a greater degree of certainty required of  
22 circumstantial evidence than of direct evidence. Your job is  
23 to weigh all the evidence in the case in making your decisions.

24           Tape recordings of conversations have been received  
25 in evidence and have been played for you. I'm sorry, tape

1 recordings of conversations have been received in evidence, and  
2 they've been played for you, and typewritten transcripts of  
3 these tape-recorded conversations have been furnished to you  
4 solely for your convenience in assisting you in following the  
5 conversation or in identifying the speakers.

6           The tapes themselves, however, are the evidence in  
7 the case, and the typewritten transcripts are not evidence.  
8 What you hear on the tapes is evidence; what you read on the  
9 transcript is not. So if you perceive any variation between  
10 the two, you must be guided solely by the tapes and not by the  
11 transcripts.

12           If you cannot, for example, determine from the tape  
13 recording that particular words were spoken or if you cannot  
14 determine from the tape recording who said a particular word or  
15 words, you must disregard the transcripts insofar as those  
16 words or that speaker are concerned.

17           Now, your decision on the facts of this case should  
18 not be determined by the number of witnesses testifying for or  
19 against a party or by the number of exhibits introduced by one  
20 side or the other. You should consider all the facts and  
21 circumstances in evidence to determine which of the witnesses  
22 you choose to believe or not believe and which of the exhibits  
23 have more or less value.

24           You may find that the testimony of a smaller number  
25 of witnesses on one side is more credible than the testimony of

1 a greater number of witnesses on the other side, or that one or  
2 two exhibits may have more significance to your evaluation of  
3 the case as against numerous exhibits which you find have less  
4 significance.

5 To sum up this instruction, always consider the  
6 quality of the evidence rather than the quantity of the  
7 evidence.

8 You have heard testimony from an undercover agent and  
9 an informant who were involved in the government's  
10 investigation in this case. Law enforcement officials may  
11 engage in stealth and deception, such as the use of informants  
12 and undercover agents, in order to investigate criminal  
13 activities. Undercover agents and informants may use false  
14 names and appearances and assume the roles of members in  
15 criminal organizations.

16 Now, you as jurors are the sole and exclusive judges  
17 of the credibility of each of the witnesses called to testify  
18 in this case, and only you determine the importance or weight,  
19 if any, that their testimony deserves. And the word  
20 "credibility" simply means the degree to which you're going to  
21 believe somebody.

22 After making your assessment concerning the  
23 credibility of a witness, you may decide to believe all of that  
24 witness's testimony, only a portion of it, or none of it at  
25 all.

1           In making your assessment of that witness, you should  
2 carefully scrutinize all of the testimony given by that  
3 witness, the circumstances under which each witness has  
4 testified, and all of the other evidence which tends to show  
5 whether a witness in your opinion is worthy of belief.  
6 Consider each witness's intelligence, motive to falsify, state  
7 of mind, and appearance and manner while on the witness stand.  
8 Consider the witness's ability to observe the matters as to  
9 which he or she has testified, and consider whether he or she  
10 impresses you as having an accurate memory or recollection of  
11 these matters.

12           Consider also any relation a witness may bear to  
13 either side of the case, the manner in which each witness might  
14 be affected by your verdict, and the extent to which, if at  
15 all, each witness is either supported or contradicted by other  
16 evidence in the case.

17           Now, inconsistencies or discrepancies in the  
18 testimony of a witness or between the testimony of different  
19 witnesses may or may not cause you to disbelieve or discredit  
20 such testimony. Two or more persons witnessing an incident or  
21 a transaction may simply see or hear it differently. Innocent  
22 misrecollection, like failure of recollection, is not an  
23 uncommon human experience. However, in weighing the effect of  
24 a discrepancy, always consider whether it relates to a matter  
25 of importance or to an insignificant detail, and consider

1 whether the discrepancy results from innocent error or from  
2 intentional falsehood.

3           After making your own judgment or assessment  
4 concerning the believability of a witness, you can then attach  
5 such importance or weight to that testimony, if any, that you  
6 feel it deserves. You will then be in a position to decide  
7 whether the government has proven the charges beyond a  
8 reasonable doubt.

9           Now, as I told you during the trial, the rules of  
10 evidence ordinarily do not permit witnesses to testify as to  
11 their own opinions or their own conclusions about important  
12 questions in a trial. An exception to this rule exists as to  
13 those witnesses who are described as expert witnesses. An  
14 expert witness is someone who by education or by experience may  
15 have become knowledgeable in some technical, scientific, or  
16 very specialized area. If such knowledge or experience may be  
17 of assistance to you in understanding some of the evidence or  
18 in determining a fact, an expert witness in that area may state  
19 an opinion as to a matter in which he or she claims to be an  
20 expert.

21           You should consider each expert opinion received in  
22 evidence in this case and give it such weight as you may think  
23 it deserves. You should consider the testimony of an expert  
24 witness just as you consider other evidence in this case. If  
25 you should decide that the opinion of an expert witness is not



1 based upon sufficient education or experience, or if you should  
2 conclude that the reasons given in support of the opinion are  
3 not sound, or if you should conclude that the opinion is  
4 outweighed by other evidence in the case, you may disregard the  
5 opinion in part or in its entirety. Again, you, the jury, are  
6 the sole judges of the facts of this case.

7 Now, you have heard the testimony of law enforcement  
8 officers. The fact that a witness may be employed by the  
9 government as a law enforcement official does not mean that his  
10 testimony is necessarily deserving of more or less  
11 consideration or greater or lesser weight than that of an  
12 ordinary witness.

13 At the same time, it is quite legitimate for defense  
14 counsel to try and attack the credibility of a law enforcement  
15 witness on the ground that his testimony may be colored by a  
16 personal or professional interest in the outcome of the case.

17 It is your decision, after reviewing all the  
18 evidence, whether to accept the testimony of the law  
19 enforcement witness and give to that testimony of the law  
20 enforcement witness such weight, if any, as you feel it  
21 deserves.

22 In evaluating credibility of the witnesses, you  
23 should take into account any evidence that the witness who  
24 testified may benefit in some way from the outcome of the case.  
25 Such an interest in the outcome creates a motive to testify

1 falsely and may sway the witness to testify in a way that  
2 advances his own interests. Therefore, if you find that any  
3 witness whose testimony you are considering may have an  
4 interest in the outcome of this trial, then you should bear  
5 that in mind when evaluating the credibility of his or her  
6 testimony and accept it with great care.

7 This is not to suggest that every witness who has an  
8 interest in the outcome of a case will testify falsely. It is  
9 for you to decide to what extent, if at all, the witness's  
10 interest has affected or colored his or her testimony.

11 The testimony of a witness may also be discredited,  
12 or as we sometimes say, impeached, by showing that the witness  
13 previously made statements which are different than or  
14 inconsistent with his or her testimony here in court. The  
15 earlier inconsistent or contradictory statements are admissible  
16 only to discredit or impeach the credibility of the witness and  
17 not to establish the truth of these earlier statements made  
18 somewhere other than here during the trial. It is the province  
19 of the jury to determine the credibility of a witness who has  
20 made prior inconsistent or contradictory statements.

21 If a person is shown to have knowingly testified  
22 falsely concerning any important or material matter, you  
23 obviously have a right to distrust the testimony of such a  
24 person concerning other matters. You may reject all of the  
25 testimony of that witness or give it such weight or credibility

1 as you may think it deserves.

2 Now, the defendant in a criminal case has an absolute  
3 right under our Constitution not to testify. The fact that the  
4 defendant, Nicholas Young, did not testify must not be  
5 discussed or considered in any way when deliberating and in  
6 arriving at your verdict. No inference of any kind may be  
7 drawn from the fact that a defendant decided to exercise his  
8 privilege under the Constitution and did not testify.

9 As stated several times before, the law never imposes  
10 upon a defendant in a criminal case the burden or duty of  
11 calling any witnesses or of producing any evidence, and that is  
12 because the burden of proof is always on the government.

13 Now, the next series of instructions are going to  
14 address the structure of the indictment and the actual charges  
15 that are at issue in this case. I first of all want to make  
16 sure I have told you that an indictment is only a formal method  
17 used by the government to accuse a person of a crime. It is  
18 not evidence of any kind against Nicholas Young, who is  
19 presumed to be innocent of the crimes charged. Even though  
20 this indictment has been returned against him, he begins this  
21 trial with absolutely no evidence against him.

22 Nicholas Young has pleaded not guilty to this  
23 indictment, and therefore, he denies that he is guilty of the  
24 charges.

25 And Mr. Young is not on trial for any act or any

1 conduct not specifically charged in the indictment.

2 A separate crime is charged in each count of the  
3 indictment, and there are three counts in this case. Each  
4 charge and the evidence pertaining to it should be considered  
5 separately by the jury. The fact that you may find the  
6 defendant guilty or not guilty as to one of the counts should  
7 not control your verdict as to any other count.

8 Now, the indictment charges that the offenses alleged  
9 were committed on or about a certain date. Although it is  
10 necessary for the government to prove beyond a reasonable doubt  
11 that each offense was committed on a date reasonably near the  
12 dates alleged in the indictment, it is not necessary for the  
13 government to prove that the offense was committed precisely on  
14 the dates charged.

15 Before I discuss the elements of the offenses charged  
16 in the indictment, I need to instruct you on the meaning of the  
17 word "and" as it is used in the charging language in the  
18 indictment. And "and" is a-n-d, the ordinary "and" word that  
19 you-all know.

20 Where a statute, that is, where a law is worded in  
21 the disjunctive, that is, it uses the word "or," you do X or Y  
22 or Z, that's a disjunctive structure, so where a statute is  
23 worded in the disjunctive, meaning it uses the word "or,"  
24 federal pleading requirements require that the government  
25 charge in the conjunctive, meaning that it uses the word "and,"

1 so it would say X and Y and Z. Where a statute specifies  
2 several alternative ways in which an offense may be committed,  
3 if only one of those alternatives is proved beyond a reasonable  
4 doubt, that is sufficient for conviction.

5 Now, all three of the charges in this case are  
6 attempt charges, so I'm going to give you now a general  
7 explanation of what we mean by "attempt." In Count 1, Nicholas  
8 Young is charged with attempting to provide material support or  
9 resources to a foreign terrorist organization. In Counts 2 and  
10 4, he is charged with attempting to obstruct justice.

11 An "attempt" means the defendant did some act that,  
12 under the circumstances as he believed them to be, was a  
13 substantial step toward the commission of the substantive  
14 crime. For example, to show that Nicholas Young is guilty of  
15 the offense charged in Count 1, the government must prove  
16 beyond a reasonable doubt that he did some act that, under the  
17 circumstances as he believed them to be, was a substantial step  
18 toward the commission of the crime of providing material  
19 support or resources to a foreign terrorist organization.

20 A substantial step is a direct act in a course of  
21 conduct planned to culminate in the commission of a crime that  
22 is strongly corroborative of the defendant's criminal purpose.  
23 A substantial step is more than mere preparation but less than  
24 completion of the crime.

25 So now we're going to go into the specific counts.

1 Count 1 of the indictment charges that between on or about  
2 December 3, 2015, and on or about August 2 of 2016, in Fairfax  
3 County, in the Eastern District of Virginia and elsewhere, the  
4 defendant did knowingly and unlawfully attempt to provide  
5 material support and resources, as that term is defined in  
6 Title 18 of the United States Code, Section 2339A(b), including  
7 personnel, money, property, and services, to a foreign  
8 terrorist organization, to wit: the Islamic State of Iraq and  
9 the Levant, ISIL, which at all relevant times was designated by  
10 the Secretary of State as a foreign terrorist organization,  
11 knowing that ISIL had been designated as a foreign terrorist  
12 organization, and knowing that ISIL had engaged in and was  
13 engaging in terrorist activity and terrorism.

14 Now, the statute that's involved in Count 1 is  
15 Section 2339B of Title 18 of the United States Code, and it  
16 defines the offense of attempting to provide material support  
17 or resources to a foreign terrorist organization as follows:  
18 "Whoever knowingly provides material support or resources to a  
19 foreign terrorist organization, or attempts or conspires to do  
20 so, shall be fined under this title or imprisoned . . . . To  
21 violate this paragraph, a person must have knowledge that the  
22 organization is a designated terrorist organization, that the  
23 organization has engaged or engages in terrorist activity, as  
24 defined by law, or that the organization has engaged or engages  
25 in terrorism as defined by law."

1           Now, every federal crime have what are called  
2           essential elements. These are particular components, and the  
3           burden is on the government to prove -- in order for them to  
4           prove a person guilty of a particular crime, they have to prove  
5           each and every one of the elements beyond a reasonable doubt.  
6           That means, therefore, for example, if you have a crime with  
7           four essential elements and let's say the government proves  
8           three of those beyond a reasonable doubt but the jury has a  
9           reasonable doubt about the fourth element, you cannot convict  
10          on that particular offense. So it's an all-or-nothing  
11          proposition for the government.

12                 So the elements for Count 1. As I said, Section  
13          2339B of Title 18 makes it a crime for any person to attempt to  
14          commit this offense, that is, to provide material support or  
15          resources to a foreign terrorist organization, knowing that the  
16          foreign terrorist organization is designated by the United  
17          States as such or that the terrorist organization had engaged  
18          or was engaging in terrorist activity or terrorism.

19                 To sustain its burden of proof for the crime of  
20          attempting to provide material support and resources to a  
21          foreign terrorist organization, the government must prove the  
22          following three essential elements beyond a reasonable doubt:

23                 First, that the defendant knowingly and intentionally  
24          attempted to provide material support or resources to a  
25          designated foreign terrorist organization. So that's number

1 one;

2 Two, that the defendant knew that ISIL, also known as  
3 ISIS and the Islamic State, was a designated foreign terrorist  
4 organization or had engaged or was engaging in terrorist  
5 activity or terrorism; and

6 Three, that the defendant did some act that was a  
7 substantial step in an effort to provide material support or  
8 resources to ISIL, also known as ISIS and the Islamic State.

9 And again, a substantial step is a direct act in a  
10 course of conduct planned to culminate in the commission of a  
11 crime that is strongly corroborative of the defendant's  
12 criminal purpose. A substantial step is more than mere  
13 preparation but less than completion of the crime.

14 Now, as explained in that previous instruction, you  
15 must find as one of the elements beyond a reasonable doubt that  
16 the defendant knew that ISIL, also known as ISIS and the  
17 Islamic State, was a designated foreign terrorist organization  
18 or had engaged or was engaging in terrorist activity or  
19 terrorism.

20 The term "foreign terrorist organization" has a  
21 particular meaning under this statute. In order for an  
22 organization to qualify as a foreign terrorist organization,  
23 the organization must have been designated as such by the  
24 Secretary of State through a process established by law. I  
25 instruct you as a matter of law that ISIL has been designated a



1 foreign terrorist organization by the United States Secretary  
2 of State and was so designated under a previous name of  
3 al-Qaeda in Iraq by the Secretary of State on October 15, 2004.

4 I further instruct you that in May of 2014, the  
5 Secretary of State amended the designation to add the alias  
6 Islamic State of Iraq and the Levant, that is, ISIL, I-S-I-L,  
7 as the primary name of this foreign terrorist organization, and  
8 added the following aliases to the ISIL listing, among others:  
9 the Islamic State of Iraq and al-Sham, that's ISIS; the Islamic  
10 State of Iraq and Syria, also ISIS; and Daesh, D-a-e-s-h.

11 The term "terrorist activity" includes any activity  
12 that, if it had been committed in the United States, would be  
13 unlawful under the laws of the United States or any state and  
14 that involves a threat, attempt, or conspiracy to use any  
15 explosive, firearm, or other weapon or dangerous device other  
16 than for mere personal monetary gain, with the intent to  
17 endanger, directly or indirectly, the safety of one or more  
18 individuals or to cause substantial damage to property.

19 The term "terrorism" means premeditated, politically  
20 motivated violence perpetrated against noncombatant targets by  
21 subnational groups or clandestine agents.

22 The term "material support or resources" includes  
23 among other things any property, tangible or intangible, or  
24 service, including currency or monetary instruments, and  
25 personnel.

1           Now, Count 2 alleges that between on or about  
2   December 3, 2015, and December 5 of 2015, in Fairfax County, in  
3   the Eastern District of Virginia, the defendant, Nicholas  
4   Young, did knowingly, unlawfully, and corruptly attempt to  
5   obstruct and impede an official proceeding, in specific, that  
6   he knew that the FBI was investigating the circumstances of  
7   what Young believed to be the attempt of an individual referred  
8   to in this trial as "Mo" to travel to join ISIL, a designated  
9   foreign terrorist organization. Nevertheless, in an attempt to  
10   thwart the investigation and prosecution of Mo and of Nicholas  
11   Young, himself, for attempting to provide material support to  
12   ISIL, Nicholas Young attempted to deceive investigators with  
13   respect to the destination and purpose of what Young believed  
14   to be Mo's travel overseas in 2014.

15           And Count 4 charges another violation of the same  
16   statute, and this one is that on or about November 20 of 2014,  
17   in Fairfax County, in the Eastern District of Virginia and  
18   elsewhere, the defendant, Nicholas Young, did knowingly,  
19   unlawfully, and corruptly attempt to obstruct, influence, and  
20   impede an official proceeding of the grand jury; in specific,  
21   that Nicholas Young sent a text message to a cell phone that  
22   Young believed to be used by an individual referred to in this  
23   trial as "Mo" in order to make it falsely appear to the FBI  
24   that Mo had left the United States to go on a vacation tour in  
25   Turkey when, instead, Nicholas Young believed that Mo had gone

1 to Turkey to go from there to Syria in order to join and fight  
2 for the designated foreign terrorist organization known as  
3 ISIL.

4 Now, the statute involved in Counts 2 and 4 is  
5 Section 1512(c)(2) of Title 18 of the United States Code, and  
6 that provides in pertinent part that: "Whoever corruptly . . .  
7 obstructs, influences, or impedes any official proceeding, or  
8 attempts to do so . . . shall be fined under this title or  
9 imprisoned . . . ."

10 There are two essential elements for the -- for  
11 Counts 2 and 4, so to sustain its burden of proof for the crime  
12 of attempted obstruction of justice, the government must prove  
13 the following elements:

14 One, that the defendant unlawfully and knowingly  
15 attempted to obstruct, influence, or impede an official  
16 proceeding; and

17 Two, that the defendant did so corruptly.

18 The fact that the defendant was dealing with  
19 undercover government agents rather than real members of the  
20 Islamic State, that is, with ISIS or ISIL, is not a defense to  
21 any charge in this indictment.

22 The term "official proceeding" includes a proceeding  
23 before a judge or court of the United States, a United States  
24 magistrate judge, a federal grand jury, or a proceeding before  
25 a federal government agency which is authorized by law.

1           The government does not need to prove that the  
2 defendant was successful in obstructing, influencing, or  
3 impeding an official proceeding. An attempt to do so is  
4 sufficient for Counts 2 and 4.

5           To act "corruptly," as this term is used in these  
6 instructions, means to act with an improper purpose, personally  
7 or by influencing another, including making a false or  
8 misleading statement, or withholding, concealing, altering, or  
9 destroying a document or other information.

10          The term "knowingly" as used throughout these  
11 instructions describes the alleged state of mind of the  
12 defendant, and it means that he was conscious and aware of his  
13 actions, realized what he was doing or what was happening  
14 around him, and did not act or fail to act because of  
15 ignorance, mistake, or accident.

16          The government is not required to prove that the  
17 defendant knew that his acts were unlawful.

18          The term "willfully," as used in these instructions  
19 to describe the alleged state of mind of the defendant, means  
20 that he knowingly performed an act, failed to act, deliberately  
21 and intentionally, that means on purpose, as contrasted with  
22 accidentally, carelessly, or unintentionally.

23          Now, the intent of a person or the knowledge that a  
24 person possesses at any given time may not ordinarily be proved  
25 directly because there is no way of directly scrutinizing the

1 workings of the human mind. In determining the issue of what a  
2 person knew or what a person intended at a particular time, you  
3 may consider any statements made or acts done or omitted by  
4 that person and all other facts and circumstances received in  
5 evidence which may aid in your determination of that person's  
6 knowledge or intent.

7           You may infer, but you are certainly not required to  
8 infer, that a person intends the natural and probable  
9 consequences of acts knowingly done or knowingly omitted. It  
10 is entirely up to you, however, to decide what facts to find  
11 from the evidence received during the trial.

12           Now, intent and motive are different concepts and  
13 should never be confused. Motive is what prompts a person to  
14 act or fail to act. Intent refers only to the state of mind  
15 with which the act is done or omitted.

16           Personal advancement and financial gain, for example,  
17 are two well-recognized motives for human conduct. These  
18 praiseworthy motives, however, may prompt one person to  
19 voluntary acts of good while prompting another person to  
20 voluntary acts of crime.

21           Good motive alone is never a defense where the act  
22 done or omitted is a crime. The motive of the defendant is  
23 therefore immaterial except insofar as evidence of motive may  
24 aid in the determination of state of mind or the intent of the  
25 defendant.

1           Now, the defendant asserts as to Count 1 that he was  
2 a victim of entrapment. An entrapment defense has two  
3 elements.

4           The first element is that the government -- I'm  
5 sorry, the first element is the government inducement of the  
6 crime, and the defendant's lack of predisposition to engage in  
7 the criminal conduct.

8           Where a person has no previous predisposition, that  
9 is, intent or purpose to violate the law, but is induced or  
10 persuaded by law enforcement officers or their agents to commit  
11 a crime, that person is a victim of entrapment, and the law as  
12 a matter of policy forbids that person's conviction.

13           On the other hand, where a person already has the  
14 readiness and willingness to break the law, the mere fact that  
15 government agents provide what appears to be favorable  
16 opportunity is not entrapment. For example, it is not  
17 entrapment for a government agent to pretend to be someone else  
18 and to offer either directly or through an informer or other  
19 decoy to engage in an unlawful transaction.

20           If then you should find beyond a reasonable doubt  
21 from the evidence in the case that before anything at all  
22 occurred respecting the alleged offense involved in this case,  
23 the defendant was ready and willing to commit a crime such as  
24 the one charged in the indictment, even if not the exact crime  
25 charged, whenever opportunity was afforded, and the government

1 officers or their agents did no more than offer the  
2 opportunity, then you should find that the defendant is not a  
3 victim of entrapment.

4           On the other hand, if the evidence in the case should  
5 leave you with a reasonable doubt whether the defendant had the  
6 previous intent or purpose to commit an offense of the  
7 character charged, apart from the inducement or persuasion of  
8 some officer or agent of the government, then it is your duty  
9 to find the defendant not guilty. Remember, the burden is on  
10 the government to prove beyond a reasonable doubt that the  
11 defendant was not entrapped.

12           Inducement requires more than mere solicitation by  
13 the government. "Inducement" is a term of art necessitating  
14 government overreaching and conduct sufficiently excessive to  
15 implant a criminal design in the mind of an otherwise innocent  
16 party. For purposes of entrapment, the word "inducement" means  
17 solicitation plus some overreaching or improper conduct on the  
18 part of the government.

19           Simply cultivating the friendship of a target in  
20 preparation to present a criminal opportunity is not inducement  
21 to commit a crime unless that friendship involves coercion,  
22 threats, or pleas that would constitute more than just  
23 providing an opportunity to commit the crime.

24           The fact that government agents initiated contact  
25 with the defendant, suggested the crime, or furnished the

1 ordinary opportunity to commit it is insufficient to show  
2 inducement.

3           Now, the term "predisposition" refers to the  
4 defendant's state of mind before government agents made any  
5 suggestion that he commit a crime. The focus on the  
6 predisposition inquiry is on whether the defendant was an  
7 unwary innocent or instead an unwary criminal who readily  
8 availed himself of the opportunity to perpetrate the crime.  
9 The government does not entrap a defendant even if he does not  
10 specifically contemplate the criminal conduct before the  
11 government agent makes any suggestion that he commit the crime,  
12 if his decision to commit the crime is the product of his own  
13 preference and not the product of government persuasion.

14           Predisposition is not limited only to crimes  
15 specifically contemplated by the defendant prior to government  
16 suggestion. Instead, it is sufficient if the defendant is of a  
17 frame of mind such that once his attention is called to the  
18 criminal opportunity, his decision to commit the crime is the  
19 product of his own preference and not the product of government  
20 persuasion.

21           Predisposition may be found from a defendant's ready  
22 response to the inducement offered. A defendant's  
23 predisposition must be determined as of the time he was first  
24 approached by a government agent; however, inferences about  
25 that predisposition may be drawn from events after the two



1 parties came into contact.

2 Now, in addition to the foregoing elements for the  
3 three offenses -- three counts we've discussed, the government  
4 must also prove with respect to Count 1 -- to each of these  
5 counts that it has venue for the offense. So for Count 1, they  
6 have to be able to prove that it is more likely true than not  
7 true that at least one act in furtherance of the crime occurred  
8 in the Eastern District of Virginia. If the government has not  
9 proven that it is more likely true than not true that at least  
10 one act in furtherance of the crime of attempted provision of  
11 material support or resources to a foreign terrorist  
12 organization occurred in the Eastern District of Virginia, then  
13 you must find the defendant, Nicholas Young, not guilty as to  
14 Count 1.

15 In addition to the foregoing elements as to Counts 2  
16 and 4, the government must also prove with respect to these  
17 counts that it is more likely true than not true that either  
18 the official proceeding that was intended to be affected was in  
19 the Eastern District of Virginia, or the conduct constituting  
20 the alleged obstruction of justice occurred in the Eastern  
21 District of Virginia. If the government has not met this  
22 burden, then you must find Nicholas Young not guilty as to  
23 Count 2 and/or Count 4. It's the same venue for both of those  
24 counts.

25 This burden that the government has to prove venue is

1 not proof beyond a reasonable doubt. It's what we call -- and  
2 we're not using it here -- preponderance of the evidence, but  
3 that simply means more likely true than not true.

4 Now, the last two instructions, I know these take a  
5 while, I instruct you that you must presume the defendant to be  
6 innocent of the crimes charged. Thus, the defendant, although  
7 accused of crime in the indictment, begins this trial with a  
8 clean slate, that is, with no evidence against him. The  
9 indictment, as you already know, is not evidence of any kind.  
10 The law permits nothing but legal evidence presented before the  
11 jury in court to be considered in support of any charge against  
12 the defendant. The presumption of innocence alone therefore is  
13 sufficient to acquit the defendant.

14 The burden is always upon the prosecution to prove  
15 guilt beyond a reasonable doubt. This burden never shifts to a  
16 defendant because the law never imposes upon a defendant in a  
17 criminal case the burden or duty of calling any witnesses or  
18 producing any evidence. The defendant is not even obligated to  
19 produce any evidence by cross-examining the witnesses for the  
20 government.

21 It is not required that the government prove guilt  
22 beyond all possible doubt. The test is one of reasonable  
23 doubt. And there's no fancy technical definition for that  
24 term. "Reasonable" and "doubt" are two ordinary English  
25 language words.

1           Unless the government proves beyond a reasonable  
2 doubt that the defendant has committed each and every element  
3 of the offenses charged in the indictment, you must find the  
4 defendant not guilty of the offense.

5           Now, upon retiring to your jury room to begin your  
6 deliberations, you must first elect one of your members to act  
7 as the foreperson. The foreperson will preside over your  
8 deliberations, and he or she will be your spokesperson here in  
9 court.

10           Your verdict must represent the collective judgment  
11 of the jury. In order to return a verdict, it is necessary  
12 that each juror agree to it; in other words, it must be  
13 unanimous.

14           It is your duty as jurors to consult with one another  
15 and to deliberate with each other with a view towards reaching  
16 an agreement if you can do so without violence to your  
17 individual judgment. Each of you must decide the case for  
18 yourself, but do so only after an impartial consideration of  
19 the evidence in the case with all the other jurors. In the  
20 course of your deliberations, do not hesitate to reexamine your  
21 own views and to change your opinion if convinced it is  
22 erroneous; however, do not surrender your honest conviction  
23 solely because of the opinion of the other jurors or for the  
24 mere purpose of being able to return a unanimous verdict.

25           Remember at all times you're not partisans. You

1 don't represent the United States, and you don't represent  
2 Mr. Young. Instead, you are judges, and your job is to judge  
3 the facts of the case, with your sole interest being to seek  
4 the truth from the evidence received during the trial.

5 Now, your verdict must be based solely upon the  
6 evidence received in the case, and nothing you have seen or  
7 read outside of court may be considered. Nothing that I have  
8 said or done during the course of this trial is intended in any  
9 way to somehow suggest to you what I think your verdict should  
10 be. Nothing said in these instructions and nothing in any form  
11 of the verdict is to suggest or convey to you in any way what I  
12 think your verdict should be. What the verdict shall be is the  
13 exclusive duty and responsibility of the jury. As I have told  
14 you so many times now, you are the sole judges of the facts of  
15 this case.

16 Now, I don't recall if any of you have sat as a juror  
17 in a Virginia court, and if you have, you might know that in  
18 Virginia state court, the jury not only determines the issue of  
19 guilt or innocence, but if a jury convicts, it also addresses  
20 sentencing. That is not how it works in the federal system.

21 So the punishment provided by law for the offenses  
22 charged in the indictment is a matter exclusively within the  
23 province of the Court and should never be considered by the  
24 jury in any way in arriving at an impartial verdict as to the  
25 offenses charged.

1 Now, we've prepared a verdict form, if I can find it,  
2 and this is the document on which the jury is going to report  
3 its decision. It has the caption of the case, United States of  
4 America v. Nicholas Young, and then the verdict form reads as  
5 follows:

6 As to Count 1, and then we've explained what it is,  
7 attempting to provide material support to a foreign terrorist  
8 organization by providing gift cards or gift card codes to Mo,  
9 we, the jury, unanimously find beyond a reasonable doubt that  
10 the defendant, Nicholas Young, is, and we have two lines: Not  
11 Guilty or Guilty. You can use an X or a check, whatever  
12 you-all want to do, to indicate your decision.

13 Then as to Count 2, attempt to obstruct justice, we,  
14 the jury, unanimously find beyond a reasonable doubt that the  
15 defendant, Nicholas Young, is, and again, Not Guilty or Guilty.

16 As to Count 4, attempt to obstruct justice, we, the  
17 jury, unanimously find beyond a reasonable doubt that the  
18 defendant, Nicholas Young, is, and then Not Guilty or Guilty.

19 Then we ask the foreperson to sign his or her  
20 signature, and please print his or her name underneath because  
21 we can't always read your signatures, and then the date that  
22 the decision is made is also placed on the verdict form.

23 Now, when you go to the jury room, as I said, your  
24 first business is going to be to select one of you to act as  
25 the foreperson. It will take us, unfortunately, because

1 there's so much evidence in this case and we have to make sure  
2 it's all in good condition, it's still going to take a bit of  
3 time to get the exhibits in to you, but you will have the  
4 verdict form, you'll have your notebooks you may take in with  
5 you, and I am going to have a couple of copies of these jury  
6 instructions made so you can refresh your memory about them.

7 Now, it's about 5 after five. It's a very light snow  
8 out there. I don't think there's a problem on the roads, but I  
9 think also as soon as you go into the jury room, you should  
10 decide whether you want to continue deliberating -- or start  
11 deliberating tonight or come back Monday morning.

12 Once the jury gets the case, it's basically you  
13 control our schedule. If the jury says they want to start  
14 deliberating at eight o'clock in the morning, I'll make sure we  
15 have the building open for you, although technically,  
16 physically it doesn't really open until eight. If a jury wants  
17 to stay later in the evening, we let juries stay late in the  
18 evening, although I can't guarantee we'll have heat unless I  
19 know about it sufficiently in advance.

20 So I'm going to send you back in a minute, and as I  
21 said, if you will decide who the foreperson is going to be and  
22 how you want to proceed today, all right?

23 Anytime the jury wants to communicate with the Court,  
24 it's done by sending a written note. That's why you have your  
25 notebooks, and if you need extra paper, we'll get it for you.

1 You should never do it orally.

2 And in any communication you make with the Court, you  
3 should never tell us how you're voting on any issue. In other  
4 words, we are not supposed to know what your -- how your  
5 deliberations are going, but if you have a question or you have  
6 a piece of information you want to give us, such as: We're  
7 taking a break at, you know, two o'clock or whatever, you write  
8 that down in a note, the foreperson ought to sign it and date  
9 it, and then you fold it over and you give it to my court  
10 security officer to bring to court.

11 Now, I require the lawyers to stay in the courtroom  
12 whenever a jury is deliberating, and that's because if you have  
13 a question, I can't answer it without running it by the  
14 attorneys. That means if you're not working, if you're taking  
15 your coffee break downstairs or going to lunch, I can let the  
16 lawyers leave the floor. So I do ask the jury foreperson to  
17 make sure that you give us your schedule so I know if you're  
18 going to take the coffee break at 11:00 Monday morning to  
19 11:15, then I can let everybody go at that point, all right?

20 All right, counsel, approach the bench.

21 (Bench conference on the record.)

22 THE COURT: Mr. Kromberg, is there any objection to  
23 the charge?

24 MR. KROMBERG: I have one, I guess it's my fault for  
25 not raising it before, but we had the instruction entitled

1 "Official Proceeding Need Not Be Pending," and we agreed that  
2 it wasn't necessary to the extent that there was no dispute  
3 regarding whether there was a proceeding in effect, but the  
4 second half of that instruction said that the standard for the  
5 defendant was foreseeability.

6 So I do request that sentence in there because  
7 otherwise, they're left with the defense arguing that they had  
8 to know there was an official proceeding, and the law is it had  
9 to be foreseeable.

10 MR. SMITH: Your Honor actually ruled on this in a  
11 hearing we had before trial. This issue was raised, and it's  
12 on the record. Your Honor ruled that the foreseeability  
13 language the government wanted to include was actually not  
14 found in 18 U.S.C. 1512(f), and Your Honor, after considering  
15 that subsection, I believe Your Honor ruled that that was not  
16 appropriate to include the foreseeability language. So I  
17 believe that's law of the case.

18 THE COURT: I'll keep that under consideration.  
19 Anything else?

20 MR. KROMBERG: Okay. I think we -- I don't know if  
21 you were going to do this anyway, but we have two alternates.

22 THE COURT: Oh, I know.

23 MR. KROMBERG: Okay. That's all. And everything  
24 else is fine, Judge.

25 THE COURT: All right. Anything?



1 MR. SMITH: None.

2 THE COURT: Okay. Mr. Kromberg, we did consider  
3 that. We're leaving that out. I think that is the law of the  
4 case at this point.

5 MR. KROMBERG: Okay.

6 THE COURT: Wait, wait, wait. As we said earlier,  
7 we've got 14 people here. Now we're going to select the two  
8 alternates, so what happens is my courtroom deputy, Ms. Guyton,  
9 is going to randomly pull two names. The first name is  
10 alternate No. 1; the second name is alternate No. 2.

11 What I then do is I keep those two under the same  
12 admonition about not conducting an investigation, all right,  
13 should we have to pull anyone back in, but they don't come back  
14 to the courthouse in the meantime. They go back to their  
15 regular life. We don't do that. In my time, I've never had a  
16 person come back in, all right? So just so you know, all  
17 right?

18 MR. SMITH: Judge, are they going to be allowed to --  
19 are they going back into the jury room now and deciding if  
20 they're --

21 THE COURT: I have to get the 12 first.

22 MR. SMITH: Okay.

23 THE COURT: All right, stay here.

24 Alternate No. 1 is No. 90, Garrett Wolf.

25 No. 2 is Justin Scuiletti, No. 70.

1 All right? You can go back.

2 (End of bench conference.)

3 THE COURT: Now, ladies and gentlemen, some of you  
4 may have wondered that there are 14 of you sitting in the box,  
5 and what you've always heard is 12 people make up the jury. It  
6 turns out that we did have 14 of you seated because given the  
7 length of the trial, and I did think it would go much further  
8 into next week than it has, we had to have a couple of extra  
9 jurors because a criminal trial has to have 12 people in the  
10 jury box, so two of you have now been pulled as alternates, and  
11 so who is Mr. Wolf?

12 Mr. Wolf, you are alternate No. 1.

13 And who is Mr. Scuiletti? You are alternate No. 2.

14 Now, what that means is that you are not going to be  
15 able to deliberate with the jury. We're going to send you  
16 home. However, you must continue to follow my instructions;  
17 that is, you cannot conduct any investigation about the case.  
18 You can go to work on Monday. That's fine.

19 But you're to conduct yourself just as if you were a  
20 regular juror, all right? Because if for some reason someone  
21 gets ill or we're not able to get a decision and then one of  
22 the jurors has to leave for some reason, we would first pull  
23 you, Mr. Wolf, in, and then if we needed a second alternate,  
24 Mr. Scuiletti.

25 We will call you as soon as the case is over to let

1 you know you're no longer needed as an alternate, but you need  
2 to make sure that you don't get yourself contaminated, all  
3 right? So what you should do is leave your notebooks here, and  
4 then you gentlemen are free to go.

5 And the rest of you, if the remaining 12 jurors --  
6 and I do want to thank both of you. It's been a whole week of  
7 your life. I hope you realize you were a very important part  
8 of the process, but we do have to let you go at this point, all  
9 right? So you, both of you may leave at this time.

10 (Alternate Jurors excused.)

11 THE COURT: So the remainder of the group, you are  
12 now the jury that's going to decide this case. So I will ask  
13 that you go back to the jury room, decide who wants to be the  
14 foreperson, decide what you want to do, whether you want to try  
15 to start deliberating tonight, although, as I said, I can't get  
16 the evidence yet to you tonight, it's going to take a while to  
17 pull all of it together.

18 If you decide -- and obviously, you're going to have  
19 to come back, I suspect, on Monday. Decide what time you want  
20 to start on Monday. Just remember, however, that you can't  
21 start until all 12 of you are here.

22 One last thing: Whoever becomes the foreperson, jury  
23 deliberation is a collective thinking process, so the opinions  
24 and the memories of the 12 of you are very important because  
25 you have to listen to each other. So anytime a juror is out of

1 the room, whether it's to use the restroom or to run downstairs  
2 and grab a cup of coffee or something, you have to stop talking  
3 about the case, because while that juror is away, he or she is  
4 not hearing what you're all talking about, and so the  
5 foreperson needs to really sort of control how things are done,  
6 all right?

7           So we're going to let you-all go back into the jury  
8 room, decide who's going to be the foreperson, and then write  
9 down his or her name, please, on a slip of paper, and let us  
10 know whether you do want to stay a bit tonight or if not, what  
11 time you want to come back on Monday. Then we'll bring you  
12 back in here, all right?

13           We'll recess court to await the decision of the jury.

14           (Recess from 5:15 p.m., until 5:27 p.m.)

15           (Defendant present, Jury out.)

16           THE COURT: All right, we've got the most succinct  
17 note I've ever seen from a jury: "End now." Let's bring the  
18 jury in.

19           (Jury present.)

20           THE COURT: Mr. Hull, I've got to tell you, that's  
21 the most succinct statement we've gotten from a jury: "End  
22 now." So anyway, we got your message -- have a seat for just a  
23 second -- so we're sending you home.

24           As I said, when you come in Monday morning, as soon  
25 as everybody is here, you can start deliberating, all right?

1 You will have -- at 9:30, when you come in, you will have three  
2 sets of the jury instructions. I think that should be enough  
3 for you-all. You can share them. You will have a copy -- the  
4 verdict form, and you will have all of the exhibits.

5 You're also going to have, because I asked the  
6 parties to do this, sort of a list of the exhibits that have  
7 been introduced, so if you're trying to find something, it will  
8 help you find them.

9 If you need to replay any of the tapes, I'm not sure  
10 whether we're going to have you listen to them here in the  
11 courtroom, because here we could give you headsets. We can't  
12 work that out in the jury room. So if that happens, we'll work  
13 it out for you. So if you need to listen to the tapes again,  
14 we'll make sure you can do that. And I think that's all you  
15 need to know.

16 Again, it's really important that you continue very  
17 carefully to follow my instructions. Given the fact that we  
18 ended early and that there were closing arguments, there may be  
19 some media coverage about the trial, so it's very important  
20 that you avoid any contamination of your thought process.

21 Have a good weekend. I know we're getting close to  
22 the holidays. And I don't think we're going to have any  
23 weather issues on Monday. If for any reason any of you get  
24 stuck and you're going to be late, it does help if you can  
25 contact the Clerk's Office because then we can send the message

1 to the other jurors, and you can't deliberate, but you could  
2 get a longer coffee or something like that, all right?

3 Thank you again for your hard work this week. We'll  
4 see you-all on Monday. I'm going to stay in session with  
5 counsel. I have a couple of housekeeping matters with them,  
6 but you're all free to go home. Thank you.

7 (Jury out.)

8 THE COURT: All right, since we have the luxury of a  
9 little time, I am still concerned that we absolutely be  
10 positive that all the right exhibits are going to the jury. So  
11 I put the burden on counsel to work with Ms. Guyton to make  
12 sure that that's fine, but we need to have that all ready to  
13 go.

14 The second thing is are both sides satisfied with the  
15 list of exhibits? You were supposed to do a list.

16 MR. KROMBERG: We are, Your Honor.

17 THE COURT: Have you looked at the government's list?

18 MR. SMITH: We are, Your Honor.

19 THE COURT: All right.

20 MR. SMITH: The same as we went through with Your  
21 Honor.

22 THE COURT: No, no, no, I mean the physical one  
23 they're going to send to the jury. I asked --

24 MR. SMITH: No, I haven't seen the physical one yet.

25 THE COURT: All right. I asked for the record for

1 each side to initial the other side's so that there's no  
2 dispute about somehow there's something that crept in in  
3 the -- on that list.

4 Before the government leaves, I want you to take all  
5 your extra notebooks, all right? So I'll make sure that you  
6 get those.

7 And we only require one attorney per side. I mean,  
8 if you-all want to be here, that's fine, you're welcome to be  
9 here, but just so you know, as long as there is one attorney  
10 who can respond to any questions the jury might have, that is  
11 sufficient, all right?

12 Ms. Moreno, you're from out of town, so that's  
13 totally up to you.

14 And I think that should be it. Are there any other  
15 issues we need to address this evening?

16 MR. KROMBERG: Not from the government, Judge.

17 THE COURT: All right. Anything further from the  
18 defense?

19 MS. MORENO: No, Your Honor.

20 THE COURT: All right, then you-all have a good  
21 weekend. The two of you both got colds. I hope it's not  
22 running around the air system in the building. But by Monday,  
23 everyone should be healed.

24 All right, we'll recess court until 9:30 Monday  
25 morning.

(Recess from 5:31 p.m., until 9:30 a.m., December 18, 2017.)

CERTIFICATE OF THE REPORTER

I certify that the foregoing is a correct transcript of  
the record of proceedings in the above-entitled matter.

/s/

\_\_\_\_\_  
Anneliese J. Thomson